SOME REMINISCENCES

By

WILLIAM L. ROYALL

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CHAPTER I

THE WAR

I was born on November 15, 1844, at my father's place, Mount Ephraim, in the lower end of Fauquier County, Virginia. Our home was, in summer, the most beautiful place I have ever seen. It was a large brick house situated upon a commanding bluff directly on the Rappahannock River, with broad low grounds directly in front and high bluffs heavily timbered upon the Culpeper side of the river, with the Blue Ridge Mountains looming up some forty miles away. We were comfortably well off, owning some fifteen slaves, a farm of one thousand acres, with enough money at interest to supply us with what the farm did not furnish. It was an ideal home and a happy one.

My grandmother, who was Chief Justice Marshall's youngest sister, lived with us. When she was a young girl she married George Keith Taylor, a very distinguished lawyer of Petersburg, Virginia. John Adams appointed him one of his midnight judges. I have always thought that those judicial appointments testify powerfully to the influence that John Marshall had even so early

as that. Adams appointed his brother-in-law one of these judges, his brother another, and gave the plum to John himself.

My grandmother was the most intellectual person that I have ever known. She lived in our family until 1867, when she died at the age of eighty-five. I was raised at her knee and she taught me all that I ever learned during the school period. Sir John Falstaff says, "If I know what the inside of a church is made of, I am a pepper-corn." I can say the same of a schoolhouse. I have never to this day seen the inside of one. My grandmother hated Thomas Jefferson as if he had been the Devil, and in that I have no doubt she reflected the views of the Chief Justice. But at any rate, she thought him the embodiment of all evil. I have heard her often denounce him as centering in himself all that was dangerous to the American people. Federalism versus Democracy.

In 1860 the people of Virginia were strongly in favor of the Union. But when Mr. Lincoln called for troops to coerce the States south of us, opinion in Virginia changed in the twinkling of an eye. The entire population became unanimous for siding with the States to the south and resisting coercion to the death.

In March, 1862, at the age of seventeen, I volunteered as a Confederate soldier, joining Company A, Ninth Virginia Cavalry. From the foun-

dation of the colony Virginians have been devoted to fine horses, and in 1861 the State was as well supplied with throroughbred and partially thoroughbred horses as with sheep and cattle. The half-bred horse is the best for a saddle horse. In the Confederate cavalry the men furnished their own horses, the government agreeing to pay for them if they were killed. The young men in Virginia were all perfect horsemen, and mounted on their thoroughbred or half-bred horses they made a magnificent spectacle in regimental formation.

My regiment was as fine as any in the Confederate service, and our colonel was Wm. H. F. Lee, a splendid officer, and son of Gen. Robert E. Lee. We were very proud of this.

How the Confederate cavalry performed the feats it did perform in the early part of the war is more than I can comprehend, for not one company in ten had any arms that were fit to fight with. When I joined my company I was given a saber which I think was used in the Revolution, and this was the only weapon given me. One day in June, 1862, while my regiment was standing in a road I bantered a comrade to see which of us could cut the largest twig from a tree. I made a powerful cut and the blade of my saber broke off at the hilt. In a short time we were dismounted and ordered to clear the Yankees out of a piece of woods in skirmish formation. We marched through the woods,

but fortunately no Yankees were there. I have often wondered what I should have done, armed with that saber hilt, if I had met a Yankee armed with a Springfield musket. A comrade to whom I mentioned this said he knew what I would have done—I would have turned around and run like smoke, and I suspect he was right.

I was in the Seven Days' battles around Richmond, in Second Manassas, in Sharpsburg or Antietam, in Fredericksburg, and in Chancellorsville, besides, in that same time, in a hundred cavalry battles, many of which would have been called "great battles" in the Cuban war.

I cannot help pausing to refer to one of these, the battle of Brandy Station or Fleetwood, on June 9, 1863. That was a fight to stir the heart of any soldier. Gen. J. E. B. Stuart, commander of the cavalry of Gen. Lee's army and in many respects the greatest cavalry soldier that ever lived, had collected all of his cavalry in the great plains that lie between Culpeper Court House and Brandy Station. The Confederate army was then engaged in the movement from Fredericksburg by way of Culpeper Court House to the Valley of Virginia to move forward to Gettysburg, Pennsylvania.

On June 7 Stuart ordered out his whole command, more than eight thousand horsemen, to pass in review before Gen. Robert E. Lee. It was a noble sight, a sight that no one could ever forget.

Next morning Stuart was hastily summoned to move down to the Rappahannock River to face General Pleasanton, who was crossing with all the cavalry of the Army of the Potomac, supported by several brigades of infantry, in an effort to penetrate the operations known to be going on in General Lee's army. This resulted in an all-day battle on June 9 between the cavalry forces of the two armies. It was a great battle, nobly supported by both sides. One incident of it has remained vividly impressed upon my mind. Our colonel, W. H. F. Lee, had been promoted to brigadier-general, and my regiment was in his brigade. About 4 o'clock in the afternoon Lee put himself at the head of my regiment which was at the foot of a hill out in the open field, standing in column of fours, and gave the order to charge up the hill, he riding at the head of the regiment. I was very near to the head of the column and could see all that took place. When we got to the summit of the hill, there, some two hundred yards away, stood a long line of blue-coated cavalry. Lee did not hesitate an instant but dashed at the center of this line with his column of fours. The Yankees were of course cut in two at once, but each of their flanks closed in on our column, and then a most terrible affray with sabers and pistols took place. We got the best of it, and we had soon killed, wounded, or captured almost all of them. They

had a good many more men over beyond the hill, but the thing was over before the others could come to their assistance.

We drew off back under the hill and then commenced to take stock of the situation. It at once appeared that Capt. Tom Towson, captain of my company, was missing. The major of the regiment called for two volunteers from my company to go up on the hill and hunt for Captain Towson. Robert W. Monroe and myself rode out and said we would do it. We went up there in plain sight of the enemy, but seeing that we were on an errand of mercy not a shot was fired at us. We found Towson stone dead, and I brought him down before the whole regiment across the neck of my horse. I mention this last incident because I have heard of a braggart member of my company telling that he and I did this thing, when Monroe and I did it. He saw me come down the hill with Towson, and long after the war, when he thought most of the witnesses were dead, he thought he would be safe in playing the hero of the event.

This was the beginning of the movement to Gettysburg. The infantry and artillery crossed the Blue Ridge range of mountains into the Valley of Virginia, and the cavalry remained upon the eastern side of the mountains to mask the movement. We moved along up into the upper part of Fau-

quier and Loudoun counties. When we had got to Aldie in Loudoun County, General Pleasanton, at the head of all the cavalry of the Army of the Potomac, thought it was time for him to be looking into the case, and he attacked us furiously there. We had two or three days of tremendous cavalry battles, in which the success of each side was about the same, and many gallant men lost their lives. Finally Pleasanton drew off without having got up on the Blue Ridge Mountains to see what was going on in the valley below.

Then General Stuart marched off on what I have always thought the wildest of wild-goose chases. Why such a splendid soldier as Stuart should have done it passes my comprehension. Obviously the thing for him to do was to put himself upon General Lee's right flank, between him and his enemy, to inform General Lee, as far as possible, of what that enemy was doing. But Stuart marched away from Lee around the Army of the Potomac, and was entirely lost to Lee for a week or more. If any one will take a map of Virginia, Maryland, and Pennsylvania and trace Stuart's course I feel confident he will be amazed at it. When he saw that Pleasanton had abandoned his attempt to interfere with Lee, Stuart was near Paris Gap in Fauquier County. He set out and marched straight to Brentsville in Prince William County, thence he struck out for the Potomac at Rowson's Ford, near

Rockville, Maryland, and from there to Hanover, Pennsylvania, where he had a severe battle with the enemy's cavalry, and thence he made his way to Gettysburg, where he joined General Lee on the second day of the battle.

I consider myself qualified to speak as an expert on the battle of Gettysburg. I became so qualified in this manner: In 1895 I was the editorial writer of the Richmond *Times*. In one of my articles I spoke of the unparalleled heroism of Pickett's charge of Virginians at Gettysburg. Some North Carolinians took me up on this and said I was ascribing to Virginians credit that belonged to North Carolinians. I was very much shocked at this, and for two reasons. I had always understood that Pickett's Virginians had carried off the honors of the day, and I did not like to see these honors torn from my fellow Virginians. Again, the idea of having done an injustice to my comrades from North Carolina stung me very acutely. I resolved therefore to study Gettysburg and find out the facts. I got the records and carefully studied every line that had been written about it, and at the end I felt that I knew my ground and could speak with confidence upon every phase of the battle. I accordingly wrote an address upon the battle, and the Confederate Army and Navy Society of Maryland coming to know of it, invited me to deliver it before them in Baltimore and I did so on the evening of January 20, 1896.

I have received two compliments upon this address which I prize very highly. I sent a copy of it to Lord Wolseley, at that time commander-in-chief of the English army, and he wrote me a very nice letter about it, in which he asked me to let him have it published in the *United Service Magazine,* the mouthpiece of the English Army and Navy. It can be readily imagined that I gave my consent, and it was published in that magazine for April and May, 1897, but was credited to W. S. Reyall, First Virginia Cavalry—the glory of war, to have your leg shot off and have your name misspelled in the Gazette!

The other compliment was this. The late historian, John C. Ropes of Boston, was an intimate friend of Capt. W. Gordon McCabe of Richmond. Shortly before his death he paid McCabe a visit of several weeks, and myself and Judge James Keith, Chief Justice of Virginia, called upon him. Ropes had read my address, and he spoke to me of it in very complimentary terms, saying he had filed it away amongst his choicest pamphlets for future use and reference. When Judge Keith and I told Ropes that we had both served as privates in the Confederate Army, and that all of our fellows had done the same, he was immensely surprised and said that fact gave him more information about the Confederate armies than all he had ever read.

What I am going to say now about Gettysburg in a condensed form can be seen in detail in that address, with reference to official documents to sustain every statement. Incidentally I will say here that General Lee was considerably outmatched in the battle. He had 62,000 men while General Meade had 105,000.

The absence of General Lee's cavalry caused the battle to come on through pure accident, and without any preparations or plans for it. Heth's division of Hill's corps having arrived near Gettysburg on July 1, undertook to march into the town to get some shoes. Just outside the town they met Buford's division of Federal cavalry, and a brisk skirmish commenced. The rest of Hill's corps was steadily arriving and Ewell's corps, returning from York, commenced arriving at the same time. On the Union side the First and Eleventh Corps were up, and they joined with Buford in repelling the attack, so that in a short time there was a very brisk action in progress between from twenty to twenty-five thousand men on each side. The battle was splendidly fought on both sides, but ended in a complete triumph for the Confederates, the First and Eleventh Corps being almost destroyed. There were not more than six thousand of these two corps available for duty when the battle was over.

General Lee arrived upon the field just at the

conclusion of the battle, and saw the remnants of the First and Eleventh Corps scampering over the hills behind Gettysburg. While he was standing in the field watching this interesting spectacle General Longstreet rode up and reported. On being asked how near his corps was he replied that he could have two divisions, Hood's and McLaw's, up for business by daylight next morning, but that Pickett's division was nearly a day's march behind. General Lee told him then and there to get his men up as quickly as possible, as he intended to attack the enemy next morning at daylight if he was there.

The situation next morning, July 2, was this. The Twelfth Corps of the Union army arrived during the night and went into line at Meade's extreme right on Culp's Hill. Their line was extended round the curve by the remnants of the First and Eleventh Corps and there was nothing else from their left to Round Top. About eight thousand of the Third Corps arrived at General Meade's left during the night and went in bivouac. This was the whole Federal force on the field for a battle at early morn on the second. They made about twenty-five thousand men, with an unfilled gap in their line between Round Top and the left of the Eleventh Corps.

What was General Lee's situation? All of Hill's and Ewell's corps were up and in line, and

two-thirds of Longstreet's corps were near enough to be in line at daylight. In some way Lee had become possessed of the information that but a small part of Meade's army had arrived at Gettysburg, and he determined to attack them at daylight on the morning of the 2nd. He gave the necessary orders to Ewell and Hill, and having personally told Longstreet on the afternoon of the 1st to get his command up by light next morning, he rested on his oars waiting for Longstreet's men to arrive. Next morning he was up and had breakfast when day broke. About light Longstreet arrived with his two divisions and Lee ordered him to get ready and attack Meade's line between Round Top and Gettysburg. But as Pickett was not up Longstreet did not want to make the attack, so he entered into a warm argument with Lee in an endeavor to persuade him to postpone the attack. He upset Lee's resolution and caused the attack to be postponed until four in the afternoon, at which time all of General Meade's army was up, and the whole advantage that had accrued to the Confederates from the situation in the morning had disappeared. General Longstreet is responsible, therefore, for General Lee's failing to inflict an awful disaster on General Meade on the morning of July 2, perhaps the utter destruction of his army. If Longstreet had done what Lee wanted, the Twelfth Corps, the remnants of the First and

Eleventh Corps, and the two divisions of the Third Corps would have been routed by 5 o'clock. The Second, Hancock's force, arrived on the field of battle at 7 A. M. and it would, of course, have been routed in a very short time. The Fifth Corps began to arrive at 8 A. M. and it would have met the same fate. The Sixth did not begin to arrive until the afternoon, so that Lee would have fought Meade's army by fragments with the whole of his own army. The result of such a conflict cannot be a matter of doubt. General Longstreet, therefore, by his contumacy (the word is not too strong) lost the Confederates the battle of Gettysburg on July 2. He equally lost it for them on July 3, but before showing this there is an outside matter I wish to relate.

General Longstreet did not attack until 4 P. M., July 2. But when he did attack he fought one of the most splendid battles that ever was fought. Longstreet was a great soldier on the field of battle. His defect was obstinacy and procrastination, but when once engaged all of that generally disappeared and he was usually as prompt and fiery as Stonewall Jackson himself. On the afternoon of July 2 he handled his adversaries so roughly that they were very glad when nightfall came on.

Now General Meade had never been satisfied with the position at Gettysburg. He was in posi-

tions forced on him by chance and never selected by him. During the night of July 2 he called a council of war of his chief generals and told them plainly that he thought the army should abandon its position and get to another nearer its base of supplies. It is said that a majority of the generals wanted to stay there and fight it out but the last thing Meade said to them was, "This is no place to fight a battle." Whilst he was in this hesitating mood an incident occurred that determined him to stay at Gettysburg and fight it out.

When General Lee started on his trip to Gettysburg he wrote Mr. Davis urging that every soldier that could be spared in other parts of the Confederacy should be collected at Culpeper Court House under the command of General Beauregard to make a threatening demonstration against Washington. Even "the effigy of an army" (his words) with Beauregard's name attached to it would afford him great relief. General Lee was so intent upon this that the last thing he did before crossing the Potomac was to write another letter to Mr. Davis urging that this should be done.

There was every reason in the world why Mr. Davis should have done what General Lee asked. In the first place it was obviously the right thing to do. In the second place, General Lee wanted it done and whatever he wanted done should have been done if it were possible to do it. He was

undertaking one of the great events in the world's history with means utterly inadequate to the end, and whatever he asked for in the way of assistance should have been given him if it were possible. The student of the records will find that there were 35,000 soldiers and 125 guns along the coast that could have been easily put at Culpeper Court House before July 1, as I show further on. It was inexcusable in Mr. Davis to make no effort to carry out General Lee's wish. Instead of doing this, he wrote General Lee telling him it was impossible to do what he wished, and trusted it to a single cavalryman to carry it through a hostile country to General Lee.

One of the leakiest things in the world was the Confederate War Office, and Lee had hardly asked for this force to be put at Culpeper Court House before it was known in Washington, and Meade fought the first two days' battles with the fear of an attack upon his rear haunting him. Ulric Dahlgren, son of the Admiral, was an adventurous young captain of twenty-one on Meade's staff. While the battle was in progress he, with a small command, was scouting in rear of the Confederate army, and he fell in with Mr. Davis's courier in the streets of Greencastle and searched him and got his letter. On reading the letter he saw the importance of getting it to General Meade, and so he rode hard and handed it to him just as the

council of war ended. The probabilities all are that Meade was going to change his position at Gettysburg, leaving the Confederates the moral effect of a great victory gained there, but that this information relieving him from all fear as to his rear, determined him to stay there and fight the third day's battle.

General Longstreet caused the Confederates to lose the third day's battle by not carrying out General Lee's orders to him. Lee directed that artillery should be sent in front of the infantry that charged the Federal line. If this had been done the terrific artillery fire that decimated Pickett's division would all have fallen on this artillery, and when Pickett's division got to the stone wall, instead of being a mere fragment of itself it would have been in full force. As it was, it cut through the Federal line. What might not have been the result if it had been united with Anderson's division directly behind it as General Lee expected would be the case, to make good what it had won? But to understand all this my lecture must be read as printed.

There is one curious thing about this matter. The North Carolinians say they went farthest at Gettysburg. But General Longstreet says in his official report that they went to pieces under the artillery fire in crossing the field and that their principal losses were incurred in quitting their work.

Before leaving the war there are one or two phases and incidents of it that I wish to record. I missed Gettysburg, and how I missed it opens up a much debated question and that question is, whether or not General J. E. B. Stuart is to blame for not being there with General Lee when he arrived there. My good friend, Colonel John S. Mosby, the famous partisan ranger, has written a great deal, and especially a most interesting book recently published, to prove that Stuart was not to blame for not being there, and that his absence caused no injury to Lee. Notwithstanding all he has said, however, I, for one, am of the opinion that Stuart ought to have crossed the Potomac at Shepherdstown and ridden on Lee's right flank all the way. The man is a fool that contends that Stuart disobeyed orders in riding around the Federal army. General Lee's orders to him plainly permitted him to do this, but the point is that Stuart ought not to have exercised the discretion conferred upon him. His hard horse sense ought to have told him to stick to Lee. That was the place where he was wanted. But what I want to point out is that the criticism of Stuart is really not criticism. It is a lamentation that so great and powerful a man as he was was not at Lee's right hand to counsel and advise with him about what was best to be done.

While Lee was moving down the Valley of Vir-

ginia with Hooker absolutely perplexed about his whereabouts, as I have said before, Pleasanton took it into his head to ride up to the top of the Blue Ridge Mountains at Ashby's Gap and take a peep over in the valley to see if Lee was really there. But when he got to Aldie and Middleburg he encountered Jeb Stuart and his cavalry right there for the purpose of preventing Mr. Pleasanton from doing that identical thing. There was tremendous fighting there for two or three days, Stuart gradually falling back to the mountains; but after awhile Pleasanton resolved to give it up.

Stuart then determined to exercise the discretion that Lee had conferred upon him. He determined to ride around Hooker's army, between him and Washington City. He started straight from Ashby's Gap toward Brentville, some twenty or thirty miles. The roads there are limestone pikes. My horse having lost all of his shoes, he became so lame, on these limestone pikes, that he could not travel at all. I reported his condition to my commanding officer and asked him what I should do. He told me to fall out of ranks and go to a blacksmith's shop and get him shod, and then to follow along as best I could. I did this, and then rode over into the Valley of Virginia to follow in General Lee's track, but before I reached the army the battle of Gettysburg had been fought. I do not know, of course, how many men this ride cost

Stuart, but it is obvious that there may have been many in my fix.

I have been very harsh in my criticisms of General Longstreet for his part in the battle of Gettysburg, but it would be a mistake to suppose that Longstreet was always an inefficient soldier. Upon the contrary, when once engaged in battle there have been few more superb soldiers than he. I got that splendid gentleman and gallant soldier, Col. Wm. H. Palmer, who was Gen. A. P. Hill's chief of staff, to write me the following account of what he witnessed of General Longstreet's conduct in the battle of the Wilderness on May 6, 1864. This shows Longstreet at his best, and shows what a magnificent soldier he was upon the field of battle. He saved the day then, and if he had not been shot down by his own men at the critical moment Grant's army would probably have been destroyed, tangled up in that wilderness as it was. Colonel Palmer's letter is as follows:

RICHMOND, VA., *May 11, 1908.*

MR. W. L. ROYALL, *Richmond, Va.*

DEAR SIR: I will endeavor to repeat a conversation had with you as to some of the occurrences of the first and second days of the battle of the Wilderness that came under my observation.

We had full notice of General Grant's movement from around Culpeper C. H. General Longstreet's First Corps was near Gordonsville (lately returned from East Tennessee), General A. P. Hill's Third Corps was

around Orange C. H., and General Ewell's Second Corps to the right of Orange C. H. General Hill moved on the plank road below Verdierville, with Heth's and Wilcox's divisions on the 4th of May, Anderson's division being left at Orange C. H. to protect our trains and rear. Ewell moved below Verdierville on our left, on the old Brock road.

Our orders on the 5th were to attack and press the enemy. I remember that our troops as they passed beyond the lines erected the previous winter at Mine Run, which they expected to occupy as before, exclaimed, "Mars Bob is going for them this time," and the poor fellows cheered as they pressed forward. About a mile beyond we came to a heavy line of dismounted cavalry. They were picked men and hard to move. We had to thicken our skirmish line. The enemy's officers behaved with the greatest gallantry, on horseback encouraging the men, and exposing themselves to hold their line; finally they gave way. We captured a number of men, and many fine horses, and moved some distance below Parker's store while waiting for Heth's division to form, as we could not drive them farther with skirmishers, and had left the infantry. Generals Lee, Hill, and Stuart rested in a large field on the left of the road (Trapp's farm). Suddenly a force of the enemy, in skirmishing order, came out of the woods on the left. General Lee walked rapidly off toward Heth's troops, calling for Colonel Taylor, his adjutant-general. General Stuart stood up and looked the danger squarely in the face; General Hill remained as he was. We were within pistol shot, when to our surprise the Federal officer gave the command "right about" and disappeared in the timber, as much alarmed at finding himself in the presence of Confederate troops as we were at their unexpected appearance.

A little after 3 o'clock General Heth was attacked

furiously. Wilcox's command, part of which had been sent into the interval between Ewell on the Brock road (and into which the skirmishers above described had penetrated), was recalled and gradually put into action, the Federals attacking at short intervals furiously, all concealed by the thick woods and underbrush. The roar of musketry was incessant, and was not relieved by any artillery fire, nothing but deadly musketry. We had had five of these heavy atacks. General Hill had moved sixteen guns of Poague's and McIntosh's battalions into the large field (Trapp's farm) on the left of the road, and close to the infantry line. His attention was called to the fact that there was no road by which the guns could be moved if our infantry line should be driven .back. He answered that he knew this, but in battle the guns must take their chances of capture, and would help to hold the line if the emergency pointed out should occur. The guns were not used during the day. Near nightfall the sixth heavy attack, bearing heavily on our extreme right, commenced—a turning movement. General Hill exposed himself to encourage the men, and sent me for the last brigade he had in reserve, Lane's. I found General Lane putting his men in a weak spot some distance to the left, where help had been called for, and part of his brigade already engaged. He hesitated for a moment only, and upon my urgent demand as from General Hill, he followed to the extreme right, where he put his troops in, as he always did, in perfect order and effectively stayed the threatened danger. I hurried back to the point from which he had been taken, and found it safe. As I passed the plank road General Stuart and Colonel Venable were sitting on their horses listening to the increased roar of battle on the extreme right, and one of them exclaimed, "If night would only come!" I explained that the increased roar of battle came from Lane's brigade going in,

and that they were such steady troops that we felt that they could not be driven off before nightfall, and Colonel Venable rode off to say as much to General Lee. Still later there was an alarm from the extreme left, the enemy pushing into the interval between Ewell and ourselves. There was nothing out of the line except the Fifth Alabama Battalion (125 strong) under Major Vandegraff, who had charge of the prisoners. They went in with a cheer, and whatever was before them was driven back, and night settled down on the dreadful field—our lines all held.

It was estimated from the prisoners we had from different commands that Hill's two divisions of about 15,000 had held their ground in the six attacks against 40,000 men. General Ewell sent word to General Hill that he had heard his battle, and congratulated him on his success.

A small fire was made close to the line, and near the right gun of Poague's battalion, for the headquarters of the Third Corps in the field so often referred to, and soon Generals Heth and Wilcox came for orders. They said their lines in the woods were like a worm fence, at every angle, and when they had undertaken to straighten them the enemy had captured our men and we captured theirs. General Hill told them that General Lee's orders were to let the men rest as they were; that General Longstreet would be up by, or soon after, midnight, and would form in the rear of the line before daylight; and to let the men of the Third Corps fall back after Longstreet's troops were in position—Longstreet's troops in the first line for the next day, Anderson's division of the Third Corps and the other divisions forming a second line.

After midnight General Hill rode to Parker's store to see what news General Lee had of Longstreet. General Wilcox also rode to Parker's store. General Lee repeated his orders.

What could be done toward straightening our line was done, and the anxious night wore slowly away. The men had marched and fought all day of the fifth, and slept the sleep of exhaustion on the ground as the battle left them at 9 o'clock at night. We could not sleep, but waited for news of Longstreet; for we knew that at the first blush of the morning the turning attack on our right would open with overwhelming numbers, and, unsupported, the men must give way.

As soon as it was light General Hill rode to the left to examine the ground in the interval between General Ewell's troops and his, leaving me at the fire by the right gun of Poague's battalion. Shortly after he left I looked across the field and saw General Longstreet loping his horse across the open. I had served in his brigade with the First Virginia Infantry, and knew him well, but had not seen him since his Chickamauga and Knoxville campaign. As I grasped his hand I said, "Ah, General, we have been looking for you since 12 o'clock last night. We expect to be attacked at any moment, and are not in any shape to resist." His answer, "My troops are not up, I have ridden ahead," was drowned in a roar of musketry. He rode off to form his troops in the road, and in a moment General Hill returned, and together we rode to the main road. As far as we could see the road was crowded with the enemy moving forward; our troops slowly and in order retiring, except just at the road, where they were holding fast. General Hill directed me to ride to the guns, and to order them to fire obliquely across the road. McGowan's brigade were for the most part through the guns and forming behind them. There were a few of our troops in front. General Hill said it could not be delayed, the guns must open. The sixteen guns firing, the last one reaching the enemy far in rear, did great execution, as the road was packed with Federal

troops. It was unexpected, as no artillery had been used the day before, except one gun in the road, which was soon silenced by the enemy's skirmishers. It enabled us to hold at the road, and soon the Texas brigade of Longstreet's corps filed behind the guns, and as they moved into position General Longstreet rode down the line, his horse at a walk, and addressing each company said, "Keep cool, men, we will straighten this out in a short time—keep cool." In the midst of the confusion his coolness and manner was inspiring. When the Texas brigade had formed they were moved through the guns. General Lee rode on their flank. The tall Texan on the left lifted his hat and called to General Lee to go back, and it was taken up by the others. General Lee lifted his hat to them, and moved slowly to the rear. It did not strike me as remarkable at the time. The brigade was noted for steadiness and courage, and had been detached from him. It had been months since he had seen them. There was no heroic leading. He was glad to be with them; he was saluting them. When the Texans moved forward General Longstreet had no time to form more troops in front; he halted and faced his men as they were marching in the road, and broke by brigades and moved them *in echelon* to meet the turning movement of the enemy. It was a beautiful movement. The Texans, part of McGowan's and much of Davis's Mississippi brigade under Colonel Stone and other troops of Heth and Wilcox, were holding all the ground around the guns, and to their right across the road; and General Longstreet's echelon movement caught the sweeping enemy and forced them back steadily and surely.* In a short time he was master of the field,

* I am referring to the movement of the first moments of contact. Later, Kershaw's division was stretched out on the right, and Field's division on the left of the plank road, Anderson's division of the Third Corps supporting. The long interval next to Ewell was protected by Heth's and Wilcox's divisions of the

and everybody felt that way about it. Nothing finer was ever done on a battlefield. Of course, we of the two divisions of the Third Corps were sore—after putting up such a battle the day before, to have to be found by Longstreet's troops retiring, and in more or less confusion was dreadful. They did not know anything about their slowness in getting to the field. They only knew that with conspicuous courage and steadiness they had redeemed a losing battle, and saved the Army of Northern Virginia from disaster. It was an inspiring homecoming for the First Corps.

General Hill, with the part of Heth's and Wilcox's divisions not engaged, moved to the left in the interval between his troops and Ewell's to a second large field, screened from the field in which the guns were by a strip of woods. Before the troops came up we rode to a house and outbuildings in the lower end of the field and dismounted. We had been there only a short while when we were startled by the breaking down of a fence just below, and in plain view was a long line of Federal infantry clearing the fence to move forward. General Hill commanded, "Mount, walk your horses, and don't look back." When near our troops he directed me to ride to General Lee and say if Anderson's division had arrived he wanted a brigade of that division sent to him. Anderson's division had just arrived. (Longstreet being late, had the road, and Anderson's division of the Third Corps could not reach us until all of Longstreet's troops were out of it.) The roar of musketry was far extended as I asked for the brigade, and General Lee said, "Well, let's see Gen-

Third Army Corps. General Longstreet had for the 6th of May battle on the right about twenty-one thousand enlisted men. In the battle of the 5th of May on the same ground General A. P. Hill had only Heth's and Wilcox's divisions, about fifteen thousand men, the interval on our left being unoccupied and a source of anxiety all the afternoon.

eral Longstreet about it." When we got near him, General Lee said, "General Hill wants one of Anderson's brigades." General Longstreet said to me, "Certainly, Colonel; which one will you take?" I said, "The leading one," and hurried back with it; and General Hill at once attacked the force and broke it up, capturing many prisoners. As I passed a group of prisoners an officer asked, "Were you not at the house a short time ago?" I told him, "Yes." He abused his officers and said, "I wanted to fire on you, but my colonel said you were farmers riding from the house." Later I rode back (everything being quiet on our line) to the plank road, and shook hands with General Jenkins, of the South Carolina brigade, with whom I had been associated, and who I had not seen since the Chickamauga and East Tennessee campaign of the First Corps. Just at this time General Longstreet, continuing his counter-turning movement, had launched Mahone's, Wofford's, and Anderson's brigades on the extreme left of the enemy, under the general direction of Colonel Sorrell, his adjutant-general and chief of staff. It was in every way successful, and part of Mahone's brigade reached the plank road in front. As General Longstreet rode forward, General Jenkins accompanying him, both were shot by our own men; Jenkins being killed, also Captain Dobie, and Orderly Bowen, of Kershaw's staff. It is hard to supply the place of any general in direct charge of a battle, but especially difficult in a tangled wilderness, in which we were fighting. General Lee directed that the lines be straightened, and we did not attack again until nearly 4 o'clock p. m., when a part of the enemy's line at the Brock road was carried, but not held; and night settled again on the dreadful battlefield.

We had thrown up good works along our whole line on the evening of the 6th and morning of the 7th. Davis's

Mississippi brigade, under Colonel Stone, who had held their ground, and fought with Longstreet's troops, were drawn from the line on the evening of the 6th, and formed in the Trapp field near the guns, and were complimented and thanked with earnestness and emotion by General A. P. Hill.

Late on the 7th General Lee rode over to our line, Heth's and Wilcox's divisions covering the interval between Longstreet's left and Ewell's right, and had a conference with General Hill in the porch of the house. From the roof some shingles had been broken out, and we had a fine marine glass, and could see clearly the open ground around Wilderness tavern over the tops of the trees. From the constant stream of couriers and officers we felt assured that it was General Grant's headquarters in our view. In a field near the headquarters was a large park of heavy guns, and as I looked these guns moved into the road and took the road to our right, their left. I went down and reported the movement and direction taken by these heavy guns. It was no doubt simply confirmatory of numerous other reports from the cavalry and other points of the line, that General Grant was moving to Spottsylvania C. H. Orders were at once given for the all-night march of Kershaw's and Field's brigades, General Longstreet's division, now under the command of General R. H. Anderson. The Third Army Corps moved on the same route on the 8th of May, passing through the burning woods, in which many a poor soul perished from fire, who had escaped death from his wounds. We had a small engagement with the enemy on our march, the enemy pushing a force from near Todd's tavern. They were moved from our path by the brigade skirmishers of Mahone's brigade, a splendid body of sharpshooters. General Early was now in command of the Third Army Corps, General Hill being sick, but he followed in his ambulance.

We reached what was to be the still bloodier field of Spottsylvania C. H. early on the 9th of May.

Yours truly,
WM. H. PALMER.

In his history of the Army of the Potomac Swinton says the Federals were at a complete loss to understand why Longstreet's overpowering rush was suspended, and after mentioning that he was shot by his own men, he adds a footnote to page 434 as follows:

"General Longstreet stated to the writer that he saw they were his own men, but in vain shouted to them to cease firing. He also expressed with great emphasis his opinion of the decisive blow he would have inflicted had he not been wounded. 'I thought,' said he, 'that we had another Bull Run on you, for I had made my dispositions to seize the Brock road.'"

It certainly looks as if Providence had determined that we should not succeed. Look at the facts. Albert Sydney Johnston stricken down at Shiloh just as he was about to inflict a death-wound upon his enemy; Joseph E. Johnston. at Seven Pines, Stonewall Jackson, at Chancellorsville, and General Longstreet at the Wilderness.

It has been generally supposed that Lee had in his Gettysburg campaign the finest army that he ever commanded. He had veteran troops, it is true, troops that had become accustomed to co-operating with each other, and so far as that goes

to make a fine army, his army was up to a high mark. But his troops had been starved and frozen until men and beasts had wasted much of their strength, and they were far from possessing that stamina, physical and moral, which naturally belonged to them.

My excellent friend, Col. Wm. H. Palmer, of Richmond, already quoted from, has made from the War Records the following most interesting summary of events shown by the records that bear upon that subject. It also shows what a large body of troops were within reach for Mr. Davis to utilize in placing the army at Culpeper Court House that General Lee wanted formed there. What would not have happened if these 35,000 veteran troops had been put at Culpeper Court House under Beauregard? Colonel Palmer permits me to insert his paper here.

War Records, Series I, Vol. XXV, Part II. Correspondence, Serial Number 40.

CHANCELLORSVILLE.

R. E. Lee, March 27, 1863, to James A. Seddon, Secretary of War, (page 687): His army not supplied with food.

R. E. Lee, March 29, 1863, to Seddon, (page 691): Scouts on duty ordered away by Department without his knowledge.

R. E. Lee, April 1, 1863, to Gen. W. N. Pendleton, (page 697): Tells him to have his artillery horses "grazed and browsed" in the absence of long forage.

R. E. Lee, April 16, 1863, to President Davis, (page 725): Unable to bring his army together for want of subsistence and forage.

R. E. Lee, April 17, 1863, to Seddon, (page 730): Army failing in health because of insufficient rations—1/4 lb. bacon, 18 oz. flour, 10 lbs. rice to each 100 men every third day. Will break down when called upon for exertion.

I interrupt Colonel Palmer's narrative at this point to insert the following on my own account. The letter of General Lee to the Secretary of War of March 27, 1863, referred to above, is too important not to be quoted. He says:

The troops of this portion of the army have for some time been confined to reduced rations, consisting of eighteen ounces of flour, four ounces of bacon of indifferent quality with occasional supplies of rice, sugar and molasses. The men are cheerful and I receive but few complaints; still I do not think it enough to continue them in health and vigor, and I fear that they will be unable to endure the hardships of the approaching campaign. Symptoms of scurvy are appearing among them, and to supply the place of vegetables each regiment is directed to send a daily detail to gather sassafras buds, wild onions, garlic, lambs-quarter and poke sprouts, but for so large an army the supply obtained is very small. I have understood, but I do not know with what truth, that the Army of the West and that in the department of South Carolina and Georgia are more bountifully supplied with provisions. I have also heard that the troops in North Carolina receive one half pound of bacon per day. I think this army deserves as much consideration as either

of those named, and if it can be supplied, respectfully ask that it shall be similarly provided.

This letter was referred by the Secretary of War to L. B. Northrup, Commissary-General of Subsistence, and he made the following reply to it:

April 1, 1863.

The reduction of the meat ration in General Lee's army was mainly due to local causes, that of transportation being chief, as will appear by the following endorsement on a letter received from J. H. Claiborne, commissary of subsistence:

RICHMOND, *March 28, 1863*

Respectfully referred to the Secretary of War, with a statement of Mr. Hottel, my transportation agent. This paper I directed to be prepared for the purpose of showing the inadequacy of the transportation for bringing even the rough articles of meat, the sugar on hand and to hand since the 13th of December having been used as a substitute for bacon. This condition requires an instant remedy. Mr. Hottel suggests one, viz: to reduce the passenger trains one half.

Major W. H. Smith, from Raleigh, reports the depots blocked up at three points, and the railroad men prefer private freight, which they say pays better.

This army is living from hand to mouth as to meat and bread, due to a want of means to get both meat and wheat brought to market. Railroads worn out, horses killed up, all obstacles beyond the reach of the commissary-general of subsistence.

Dr. Cartwright in a lengthy report on the reduction of the meat ration (which was referred to this bureau by the President) urges that it be done on sanitary grounds.

The appearance of the men of General Lee's army and their health confirms the opinion of Dr. Cartwright, as to diminishing the ration, and it is recommended that the bacon and pork rations be reduced to one fourth of a pound throughout the army.

Well, well, well! Does not that outdo anything that was ever heard of? Here is General Lee telling the Department that his soldiers are starving, but with a heroism never shown before are making no complaint; that he is trying to eke out their meager rations by making them gather sassafras buds and wild onions—grazing them along with the cattle—and the Department replies he must not feed his men too high, or they will get fat, sleek and lazy! What is to be thought of that?

But that is not all. Commissary-General Northrup adds in this same communication that if a sufficiently strong military guard is furnished him he thinks he can glean something out of the counties of Fauquier, Loudoun, Culpeper, and Madison, Virginia, which had been the camping-ground of the two armies during all the war. They were rich counties and they were near at hand and convenient, and the people had hidden a little from the Federal armies, and if he had soldiers sent with him he thought he could drag out of those desolated counties a little more. This correspondence furnishes a key to the incompetency of the Confederate civil administration in all directions. In-

stead of grappling with the difficulties of the case at the source they were treated as weak men always treat exigencies, weak substitutes were resorted to where there should have been nothing but positive and energetic action. Instead of the forcible seizure of such trains as were necessary to bring food to the army, we have an imbecile essay upon the peril of soldiers getting fat and lazy if fed too high, and a suggestion that as the four counties named might be drained of something more, resort had better be had to them.

This correspondence furnishes a clue to the whole civil administration of the Confederacy. This inefficiency went on dragging the Confederate soldier's condition down until it became pitiable in the last degree. General Lee's army became so ragged it could scarcely be said to be clothed at all, and to a great extent it was without shoes. The men received rations that were actually not enough to keep body and soul together, but they remained patiently at their posts fighting odds of two or three to one every day, never murmuring, never complaining.

I quote in this connection the following passage from the autobiography of Gen. Benjamin F. Butler (page 610). Speaking of the conditions existing in the Confederate Army in the summer of 1864 he says:

In the matter of starvation, the fact is incontestible that a soldier in our army would have quite easily starved on the rations which, in the latter days of the war, were served out to the Confederate soldiers before Petersburg. I examined the haversacks of many Confederate soldiers captured on picket, during the summer of 1864, and found therein, as their rations for three days, scarcely more than a pint of kernels of corn, none of which were broken but only parched to blackness by the fire, and a piece of meat, most frequently raw bacon, some three inches long by an inch and a half wide and less than half an inch thick. Now no Northern soldier could have lived three days upon that, and the lank, emaciated condition of the prisoners fully testifies to the meagerness of their means of subsistence * * * With regard to clothing it was simply impossible for the Confederates at that time and for many preceding months to have sufficient clothing upon the bodies of their soldiers, and many passed the winter barefoot.

Of course if there had been no food in the country no criticism could be made upon the Confederate civil administration for giving the army none. But there was plenty of food if energetic action had been taken to concentrate it for the army.

Major Lewis Ginter, who died in 1897, was one of the most respected and beloved citizens that Richmond ever had. During the war he was the quartermaster of Thomas's Georgia brigade. He was a very prosperous business man, and after the war he made a very large fortune in the cigarette business in the firm of Allen & Ginter. This business developed into the great American Tobacco

Company. Prior to the war Gen. Robert E. Lee knew Major Ginter well, and had the greatest confidence in him and the greatest respect for him.

In 1895 the same Judge Keith, to whom I have already referred, and myself were calling upon Major Ginter one evening, and the starving condition of our army at Petersburg in the winter and spring of 1864-65 came under discussion. Major Ginter made the following statement, in effect, to us. He said that General Lee sent for him during that time and told him to go down into North Carolina and see if he could not find something there to feed and clothe his army with. Ginter said he went to Danville, Virginia, and there found warehouses bursting with grain and meat. On inquiring what this meant, the quartermaster in charge said they could not get the use of any trains to send these provisions to the army; that the sutlers controlled all the transportation and were using it to carry wines and whiskey and cigars and other such things to Richmond; that these sutlers had the authority of the Confederate administration for what they were doing. The quartermaster said that if General Lee would only say the word they would forcibly seize the engines and cars and send the provisions to the army. Ginter said he went to Charlotte, North Carolina, and to other North Carolina towns, and he found the same conditions existing in all of them. He re-

turned to Petersburg and reported what he had learned to General Lee, and he urged him to send orders to the quartermasters to seize the trains and send him provisions. He said General Lee walked up and down in his tent for awhile and then said, "No, Major, I can't do it. It would be revolutionary. If the administration chooses to let this army starve it will have to starve."

The thing happened just as Major Ginter told it, because he was incapable of telling a falsehood; and Judge Keith will testify I have related it just as Major Ginter told it to us.

If the Army of Northern Virginia had been kept supplied with food and clothing General Grant would have found his work cut out for him when he undertook to drive it away from Petersburg. I don't believe the army was ever marshalled that could have done it. The Army of Northern Virginia was not conquered. It was simply forsaken by its government and left to perish.

It may be thought that after these bitter reflections I am still an "unreconstructed rebel." But I am not. I have come to believe that the thing turned out as it ought to have turned out. Slavery and the principle of secession had to be got rid of and the only way they could ever have been got rid of was to fight the war to a finish.

I am a thoroughly reconstructed rebel that looks upon the Government of the United States as his

government, and I am as ready to offer my life for it as I was to offer it for the Confederate Government. But when I get to writing of those old days my fighting blood gets up and all the enthusiasm of the period returns to me.

I return now to Colonel Palmer's narrative.

R. E. Lee, April 20, 1863, to Davis, (*page 737*): Gives points in the South (Florida and Georgia) where supplies can be had in abundance.

R. E. Lee, May 2, 1863, to Davis, (*page 407*): Insufficiency of cavalry in his army; points out where cavalry regiments doing nothing can be ordered to him. Fears disaster from insufficiency of cavalry.

R E. Lee, May 2, 1863, to Davis, (*page 765*): "If I had all of my command and could keep it supplied with provisions and forage, I would feel easy."

R E. Lee, May 7, 1863, to Davis, (*page 782*): Calls attention to insufficiency of his cavalry. His army 40,000; Hooker's, 120,000 men. Losses at Chancellorsville heavy; always so where the inequality of numbers is so great. Recommends that troops be brought from the South, where they have nothing to do and will perish from disease and inaction. Bring Beauregard with them and put him in command here.

R. E. Lee, May 20, 1863, to Davis, (page 810): A. P. Hill, I think upon the whole, is the best soldier of his grade with me.

R. E. Lee, May 30, 1863, to Davis, (page 832): Requests that the War Department take charge of D. H. Hill's department of the Cape Fear and that he be relieved of its supervision. D. H. Hill does not cooperate with him or obey him or return troops that belong to the Army of Northern Virginia. These delays, he

fears, will leave him nothing to do but to retreat. Fears that the time has passed when he can take the offensive with advantage.

R. E. Lee, May 30, 1863, to Seddon, (page 834): Recommends that troops be brought from South Carolina, Georgia, Florida, Cape Fear Department, and James River. Asks to be relieved of command of Cape Fear Department.

R. E. Lee, June 2, 1863, to Davis, (page 849): Regrets to lose Jenkins's and Ransom's brigades; good officers and veteran troops. Comments on D. H. Hill's actions.

R. E. Lee, June 2, 1863, to Seddon, (page 849): Further comments on D. H. Hill's retaining his troops and attempting to send inferior troops in their stead.

R. E. Lee, June 3, 1863, to Seddon, (page 851): About D. H. Hill's conduct and the best brigades retained from the Army of Northern Virginia.

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GETTYSBURG.

R. E. Lee, June 3, 1863, to Gen. Sam Jones, (page 858): Even with this reduction I am deficient in general transportation for quartermaster, etc., trains.

R. E. Lee, June 5, 1863, to Gen. A. P. Hill, (page 859): Third army corps in front of Fredericksburg, balance of the army moving north.

R. E. Lee, June 8, 1863, to Seddon, Secretary of War, (page 868): Writing of D. H. Hill. "He does not seem to have projected much and has accomplished less." Nothing to be gained by remaining on the defensive. If the Department thinks it better to remain on defensive it has only to inform me. Troops not needed in the South. Sent to the armies in the field, we might hope to make some impression on the enemy.

Note on the way to Gettysburg: Insufficient food, in-

sufficient transportation, insufficient cavalry. No infantry reinforcements. Can't get his own troops from Cape Fear Department. Troops rotting from inaction in South. Heroically starts north, but on June 8th at Culpeper Court House. Is uncertain if Department will let him go.

Seddon, Secretary of War, June 9, 1863, to Gen. Lee, (page 874): Apologizes to General Lee and explains that the disposition of the troops in North Carolina is determined by Mr. Davis.

Gen. R. E. Lee, June 9, 1863, to Davis, (page 874): Culpeper Court House. Reports that the enemy's cavalry, infantry, and artillery have crossed the Rappahannock in force. Prisoners from two corps captured. Suggests orders to Cooke's brigade and Jenkins's brigade to be sent to the Army of Northern Virginia.

President Davis, June 9, 1863, (page 874): Mr. Davis refers General Lee's dispatch to Gen. D. H. Hill as to Jenkins's and Cooke's brigades.

Saml. Cooper, A. A. G., June 10, 1863, to Gen. D. H. Hill, (page 870): Informs Gen. D. H. Hill of General Lee's order as to Cooke's and Jenkins's brigades and leaves it to Gen. D. H. Hill's discretion if General Lee's order shall be carried out.

R. E. Lee, June 13, 1863, to Seddon, (page 886): "You can realize the difficulty of operating in an offensive movement with this army if it is to be divided to cover Richmond. It seems to me useless to attempt it with the force against it."

Saml. Cooper, A. A. G., June 15, 1863, to D. H. Hill, (pages 890-891): Authorizes Hill to retain Jenkins's brigade, Ransom's to Drewry's Bluff. Corse's Virginia brigade drawn from General Lee's command at Culpeper.

R. E. Lee, June 16, 1863, to A. P. Hill: Informs him

that Anderson's division of his corps, Third, has reached Culpeper Court House. Expects another division next day.

Davis, June 19, 1863, to Lee, (page 904): Informs General Lee why a part of his army, "Pickett's division, Corse's brigade, has been detained. Jenkins's brigade deemed necessary by D. H. Hill to protect Petersburg."

Gen. A. G. Jenkins, June 20, 1863, to D. H. Hill, Murfee's Depot, (p. 908). I beg as a personal favor that you arrange to send my brigade to join General Lee. I have sent scouts to Suffolk. No enemy, no gunboats.

Gen. G. E. Pickett, June 21, 1863, to A. A. G. Chilton, (page 910): Wants his scattered command sent to him.

Gen. Lee, June 22, 1863, to Gen. J. E. B. Stuart, (page 913): Move with three brigades into Maryland. (Two brigades can guard the Blue Ridge and take care of your rear.) Take position on General Ewell's right. Place yourself in communication with him. One column will move by Emmitsburg route, another by Chambersburg.

Gen. Lee, June 23, 1863, to Gen. Stuart: I think you had better withdraw on this side of the mountain tomorrow night, camp at Shepherdstown the next day and move over to Frederickstown. In either case, after crossing the river you must move on and feel the right of Ewell's troops, collecting information, provisions, etc.

Gen. Lee, June 23, 1863, to Davis, (page 925). Urges withdrawal of troops from Carolina and Georgia under Beauregard and part at least pushed forward to Culpeper Court House. His presence would give magnitude to even a small demonstration and tend greatly to confound and perplex the enemy. Good results would follow from sending forward under Beauregard such

troops about Richmond and North Carolina as could be spared for a short time. The good effect of beginning to assemble an army at Culpeper Court House would, I think, soon become apparent, and the movement might be increased in importance as the result might appear to justify.

R. E. Lee to Saml. Cooper, A. A. G., June 23, (*p. 925*): Urges that Corse's brigade be sent to Pickett's division. Not needed where it is, especially if the plan of assembling an army under Beauregard at Culpeper C. H. is adopted.

Gen. Lee to Davis, opposite Williamsport, June 25, 1863, (*p. 93*): "If the place I suggested the other day of organizing an army, even in effigy, under Beauregard at Culpeper C. H. can be carried into effect, much relief will be afforded. If even the brigades in Virginia and North Carolina, which Generals D. H. Hill and Elzey think cannot be spared, were ordered there at once and General Beauregard were sent there, if he had to return to South Carolina, it would do more to protect both States than anything else."

Gen. Lee to Davis, Williamsport, June 25, 1863: "It seems to me that we cannot afford to keep our troops awaiting possible movements of the enemy, but that our true policy is, as far as we can, to employ our own forces so as to give occupation to his, at points of our selection. * * * I feel sure, therefore, that the best use that can be made of the troops in Carolina and those in Virginia now guarding Richmond would be the prompt assembling of the main body of them * * * together with as many as can be drawn from the army of Gen. Beauregard at Culpeper C. H. under the command of that officer. It should never be forgotten that our concentration at any point compels that of the enemy, and his numbers being limited, tends to relieve all other threatened localities."

Page 946.—Abstract from the Department of North Carolina, Maj.-Gen. D. H. Hill, commanding, headquarters near Richmond, Virginia, June 30, 1863.

Permanent force: Clingman's brigade, Cooke's brigade, Martin's brigade, Colquitt's brigade, Jenkins's brigade, Ransom's brigade, unattached infantry; artillery; cavalry. Officers, 1,308; aggregate present, 22,822; pieces of field artillery, 104.

Major General Elzey's Command: Wise's brigade, Corse's brigade of Pickett's division; local troops, number not given.

Mr. Davis's letter to General Lee of June 28, 1863, giving reasons why he could not send General Beauregard to Culpeper C. H. to make a diversion in his favor *was entrusted to a courier* who was captured by Captain Dahlgren of General Meade's staff, so that General Meade had full knowledge that he had nothing to fear in the direction of Washington. General Lee first learned that his suggestions would not be entertained by reading Mr. Davis's letter to him in the New York *Herald* and the New York *Tribune*.

This ends Colonel Palmer's narrative. There are several remarks to be made upon it. It is positively sickening to see the contempt with which General Lee's recommendations and suggestions were treated. He, the Hercules of the undertaking, without whom all of them would have been kicked into the James River in a jiffy, receives no more consideration when he tells them what is necessary to do than if he had been a quartermaster's clerk in some bomb-proof. He cannot even require

his subordinate, D. H. Hill, to send him his veteran brigades which he needed so sadly in the crisis at Gettysburg. His recommendations, so full of wisdom and common sense, that the large force scattered over the south should be concentrated at Culpeper Court House to threaten Meade's rear when he and Meade came to their death grapple is treated as if it were the suggestion of an idle school boy.

"Those whom the gods wish to destroy they first make mad," and this seems to have been the reason the Confederacy had its civil administration.

No wonder General Lee resigned the command of his army when he got back from Gettysburg, and no one without his sublime patriotism and heroism would ever have consented to withdraw his resignation.

Gen. Robert E. Lee was, in my opinion, one of the greatest, if not the very greatest, characters in all history. The domination which he established over the Army of Northern Virginia is as high a tribute to him as could be paid. There were some of the fiercest and most inflexible men in that army that the world has ever seen. Stonewall Jackson, Jubal A. Early, John B. Gordon, J. E. B. Stuart, J. B. Hood were men who would stand erect in any presence on earth and yet they all stood uncovered in Lee's presence, and took the law from him as a

child takes it from his father. Stonewall Jackson once said that General Lee was the only man in the world that he would follow blindly, but that he would follow Lee blindly wherever he chose to lead. The whole army had exactly that feeling toward General Lee. They all called him "Marse Robert," and this expressed their feeling of devotion toward him. None but the most extraordinary man could have established such a mastery over these inflexible men. It was General Lee's domination of his army that made it the greatest fighting machine the world ever saw.

In the year 1890 the magnificent equestrian statue of General Lee was unveiled at Richmond. There was an immense turnout of Confederate soldiers from all over the South. It was a day to be remembered by all who saw it. Many members of the old Third Virginia Cavalry attended, and they formed themselves into an organization. Their old colonel, Owens, was there, one of the most gallant and splendid soldiers who ever drew a sword. He was very poor and was unable to secure a horse to ride at the head of his regiment. My dear friend, Ned Minor, who belonged to the Third, told me the state of the case. Another dear friend of mine, Willie Trigg, had lent me his horse, and so I said to Minor, "What, Colonel Owens without a horse on such an occasion as this! That shall never be while Buck Royall has one." (My

friends have always called me "Buck.") "Take my horse and convey him to Colonel Owens with my compliments." He did it, and the dear old colonel rode at the head of his regiment on that proud day, one of the proudest men there. He was unable to make me what he considered a fitting acknowledgment of my service to him, but he had just had a girl baby born and he went home and named her "Buck Royall."

Speaking of General Robert E. Lee, in my opinion there was never anything more preposterous than the claim of Union zealots that General Lee was a traitor because he cast in his lot with the Southern people. It is well known that one of their heroes, General George H. Thomas, hesitated a long time whether he should not resign from the Union Army and come South, and the admirers of Admiral Farragut (and who is not an admirer of him?) had better not press their inquiries too closely or they may find out the same thing about him.

After our return from Gettysburg and while the army was about Culpeper Court House, Colonel Chambliss, of the Thirteenth Virginia, commanding our brigade, had me detailed as a scout because of my knowledge of the country north of the Rappahannock, to get information concerning the enemy then occupying that territory. I remained

detailed for that service until March 20, 1864, coming under the personal orders and direction of General J. E. B. Stuart.

I had many thrilling adventures in my career as a scout. On one occasion I had four men with me, and we came to a house about half a mile from a camp of three regiments of Federal cavalry in lower Culpeper County where a party of eight men from this camp were pillaging and plundering a poor woman's premises. We waylaid these gentlemen as they were leaving this house, and springing up we demanded their surrender. Six of them surrendered, but two of them tried to run the gauntlet. One of my men shot one of them dead but the other one got away.

I knew of course this was going to bring an overwhelming force down on me and that I had to dust. I was mounted on one of the captured horses with two of their Sharp's carbines taken from the enemy swung around my shoulders. The prisoners were walking, and one of my men, named Robert W. Monroe, was on foot with them. The other three of my men were some distance in the rear with the captured horses. In turning a corner in some very thick pines we came face to face with two mounted Federal soldiers not twenty feet from us. I called out at once to them, "Surrender!" Instead of doing so the man on my side of the road commenced drawing his revolver. I raised one of my

carbines to my shoulder and with the start I had in firing I ought to have shot him dead before he got his revolver from the holster. But I retained the reins in my left hand, and as soon as I slackened the pressure on the bit my horse would move forward and disturb my aim. This was repeated two or three times, by which time I had lost my advantage over my adversary and I could see down the barrel of his revolver pointed directly at me. I saw I must fire or I was gone, and so I pulled the trigger with the best aim I could get. I made the luckiest of shots. I struck him at the pit of his right arm and cut it almost off. His cocked revolver fell from his hand. It was at full cock and in another instant he would have fired.

The other man had his revolver in his boot, and in endeavoring to draw it the lock hung in his boot strap, and he was tugging away at it while the battle was going on between me and his friend. Monroe had run to him and seized his horse by the bit, but he did not see Monroe, who had to strike him a violent blow with his revolver to get his attention; but when that occurred he sung out in fine style that he would surrender. He wore a pair of long buckskin gloves that he presented to me and they had printed across them the words Augustus J. Mount of New Jersey. I would not tell this but that Monroe is living to say whether it is true or not. A letter addressed to him at Gold-

vein, Fauquier County, Virginia, will receive immediate attention. I suspect if Mr. Mount is alive he, too, has a rather lively recollection of the incident.

We left the wounded man on the side of the road, knowing full well that his friends would soon be there. I was told afterward that he died. He was as game a chap as I ever encountered.

I took my prisoners to Richmond and lodged them in Libby Prison. At that time General Meade's army was lying about Culpeper Court House. The territory around Fredericksburg was neutral, sometimes occupied by the scouting parties of one side, sometimes by the other. About seven or eight miles from Fredericksburg there was a place called Hamilton's Crossing, to which, as I knew, the railroad daily sent a train of long box-cars. I took my prisoners to Hamilton's Crossing to put them on this train. When I got there I found Judge R. C. L. Moncure, the President of the Supreme Court of Appeals of Virginia, a position that corresponds to chief justice in the other States. He is since dead, leaving a saintly name as a man and a judge. The old gentleman's home was in the lower end of Stafford County, near Fredericksburg, though his family was with him in Richmond. He had been to his home to kill and slaughter a young steer that he had there and carry it to Richmond for his family. I knew the old

gentleman well and we greeted each other most cordially. The conductor gave me one of the long box-cars to put my prisoners in, and locked the Judge and myself in it with the prisoners. It was just at nightfall when the train started for Richmond, and it took us all night to get there. I had on me two large army revolvers and I gave the old Judge one of these. I put the prisoners at one end of the car and the Judge and I sat on the floor at the other end. It was pitch dark in the car. I notified the prisoners that if I heard any movement amongst them I should commence firing on them and continue firing while the movement lasted, so that there was perfect quiet there during the night. The old Judge sat bolt upright all night guarding the prisoners, while I laid down and had a good night's sleep. We have often laughed together since over how I made him sit up all night and guard my prisoners while I enjoyed a refreshing sleep.

I want to make it known that I did my duty as a Confederate soldier, and so I state the following. In 1896 I applied for membership in George E. Pickett Camp of Confederate Veterans at Richmond. The commander told me I must furnish references to prove my standing as a soldier. I replied that a private soldier should always refer to his captain for testimony as to his standing, and that my last captain,—two having been killed,—

E. M. Henry, lived at Norfolk, Virginia. He wrote to him and received the following reply, which is on file in Pickett Camp in Richmond:

NORFOLK, VIRGINIA, *April 9, 1896.*

Col. R. N. Northern, Commander Pickett Camp C. V.

Dear Colonel: Yours of the 7th inst. received, and in reply would state that it gives me great pleasure to testify to the good standing and soldierly qualities of Mr. W. L. Royall during the war. He was a member of my Company A, Ninth Virginia Cavalry, Beale's brigade. He was a brave and gallant trooper, bold and daring, and served for the last two years of the war as a scout, detailed for that purpose, and rendered valuable service in gaining information as to the enemy's movements by his daring and risk of life.

Your Comrade, E. M. HENRY,
Capt. Co. A, Ninth Virginia Cavalry.

I would not exchange that certificate for Mr. Rockefeller's fortune.

On March 20, 1864, I got into a brush with some Federal cavalry and was shot through the left hand and taken prisoner. The headquarters of the command, which was the Second New York Cavalry and the Eighteenth Pennsylvania Cavalry, under the command of Lieutenant Colonel Timothy O'Brien, were at "The Grove," in the lower end of Fauquier County, Virginia, where these two regiments had been for several weeks.

At "The Grove" there were two churches and

nothing else; one was a Presbyterian church on the north side of the public road, the other, a Baptist church, on the south side. My mother's home was distant only two miles from "The Grove." My father, a Presbyterian minister, had built the Presbyterian church at "The Grove," and he preached in it for twenty years. He was buried at the back of the church.

The officer in charge of the party that had captured me was a lieutenant in the Second New York Cavalry. He had frequently ridden over to my mother's house and had made the acquaintance of the family. They treated him courteously and politely, and he had promised my mother that if I ever fell into his hands he would see that I was properly treated. When we got to "The Grove" I was put into the Baptist church. After a while I was sent for and taken over to the Presbyterian church. When I entered I saw a table around which were seated some five or six officers with a Bible on the table. I had had sufficient acquaintance with military matters to know that a drumhead court martial in the field is usually nothing but a stepping-stone to the gallows, and this looked to me prodigiously like a drumhead court martial. I was ordered to be seated, and then Colonel O'Brien read an order which he seemed to have that day received from General Kilpatrick. It was about like this;

COLONEL O'BRIEN:

The first bushwhacker you catch, you will try by court martial and have hung.

GENERAL KILPATRICK.

Colonel O'Brien told me I was about to be tried by court martial on the charge of being a bushwhacker. The situation was about as terrible as a boy of nineteen could be confronted with. For a time I was dazed and could say nothing. But by degrees I recovered possession of my faculties, and was soon pleading my cause more earnestly than I have ever since pleaded one. I had General Stuart's orders in my pocket detailing me from my regiment and ordering me upon the very service I had been engaged in, and I made the most of that. Finally I was sent out. In the course of an hour Colonel O'Brien came to me and told me the court had acquitted me. I doubt if in all my career my life has been in as much danger as it was that day.

After the trial I was put into an ambulance to be carried to General Meade's headquarters at Brandy Station, Culpeper County. My friend, the second lieutenant of the Second New York Cavalry, who had been on the court martial, came to the ambulance with some loaves of bread for me. I asked him how it was I escaped. He told me he had promised my mother to look out for me if I ever fell in his hands and that he had just taken the stand in the court that I should not be hung

and had finally brought a majority of the officers over to his side. When I got to General Meade's headquarters I was put into the "bull pen." This was a circular stockade made of split poles set into the ground and about fifteen or eighteen feet high, with no covering for it but the heavens. It was bitterly cold, and the snow fell that night a foot deep. When I entered the "bull pen," which was filled with Federal deserters, Confederate deserters, Confederate prisoners of war and civilian prisoners, perhaps fifty in number all told, to my amazement I found amongst them my little brother Taylor, twelve years of age. Some wretched raiders had torn him from my mother's arms and had brought him there. My mother was only able to throw an old shawl around him, which she had pinned at the neck. The poor little fellow was shivering with cold when I found him. There was a small open fire in the middle of the pen that every one was struggling to get near. I struggled with the rest, to get Taylor to the fire, but with my wounded hand I was not in good shape for the struggle. That night we had to lie upon the ground to get what sleep we did get. I had a heavy army overcoat and I took the child in my arms, wrapping his shawl and my overcoat around us as best I could, and there we lay through all that dreadful night.

Next day I was taken out of the "bull pen" and

sent to the Old Capitol Prison in Washington. I never saw Taylor again. The exposure was too much for him. His throat was weak and had been operated on. In a short time he was taken out of the "bull pen" and sent to Alexandria, and there, in the common jail, he died, without a face near him that he had ever looked on before.

I was kept in the Old Capitol Prison until about the middle of June, when I was sent around by sea to Fort Delaware, which is situated upon a small island about forty miles from Philadelphia, where the Delaware River debouches into the Delaware Bay. The river is about four miles wide at this point and the island is in about the middle of the river. There were some eight thousand Confederate prisoners on this island during the year I stayed there. They were kept in barracks made by planking up frames of scantling. These barracks were very open, and there was only one stove to a barrack containing 400 men, called a division. The stove was practically useless for heating the barrack, and the weather was intensely cold there in the winter. I have seen the Delaware River frozen over so fast and tight that an army with all its artillery and trains could pass over on the ice.

When I had been there a short time, Hon. Theodore F. Randolph, afterward Governor of New Jersey and United States Senator from New

Jersey, who had married a relative of mine, found out I was at Fort Delaware and from that time on, until I was released from prison in June, 1865, he supplied me with $25 every six weeks. Two members of my company were in prison with me and I shared this money with them. It was most material in keeping us alive.

The treatment we received at Fort Delaware is an everlasting disgrace to the Government of the United States of that period. Much has been said of the bad treatment of Union soldiers held prisoners by the Confederacy but it is well known that the Confederates were anxious to exchange prisoners and that the Union prisoners fared as well as the Confederate soldiers in the field. The Confederates did as well as they could do, but there was no excuse for the Union Government not giving us all the food and warmth that was necessary for they had an abundance of everything. We were starved and frozen; we had but two meals a day. Breakfast consisted of a piece of loaf bread about the size of a man's clenched fist and a little piece of salt pork or beef about an inch thick. We had no coffee. Dinner consisted of the same. This was not food enough to keep a man from being perpetually hungry and no one can imagine the pangs of perpetual hunger who has not endured them.

A piece of wanton cruelty was inflicted upon us

in the matter of blankets. No prisoner was allowed to have more than one blanket, never mind how he might have come in possession of the excess. Once in every two weeks the whole prison was turned out and each man was searched and all blankets in excess of one to the man were confiscated. I used to buy blankets in between these searches, for myself and my two comrades, but they were invariably taken away from us and we had to sleep in that awful cold on bare planks with little or no covering. Our sufferings were intense.

CHAPTER II

EVENTS IN RICHMOND—DUELLING

In June, 1865, I returned to my mother's home to find the family, consisting of my mother, my grandmother, my aunt, my elder, but incapacitated brother, my sister and her husband and four children and my unmarried sister, existing, but that was all, on the place. The negroes were all gone, the Federal army had taken from them every animal and how they had managed to exist I could not understand. I went to work as a common laborer on the farm and labored there two years, by which time I had pulled the place up so that my mother and her family could get a very good living out of it.

My mother had some money at interest before the war, and getting that in, she gave me $2,000 and started me out in the world to make my future, whether good or bad.

I came to Richmond, January 1, 1868, and read law with William Green, Esq., the most profound and learned lawyer that I have ever known anything of. His argument in the case of Moon *vs.* Stone in 19th Grattan has been referred to by the judges in Westminster Hall.*

* Mr. Green was not only a most learned lawyer, but he had picked up a vast deal of miscellaneous information from books,

At the end of a year's study I was licensed to practice law, and I hung out my shingle in the city of Richmond. The society of Richmond was at that time most delightful as it is to this day. The young ladies were many of them very beautiful and of the most fascinating manners. They had just

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and when once he learned a thing in reading it stuck in his mind like a burr. Like all very learned men he always had a "wise saw and modern instance" for every case, and the thing that interested him whenever any subject came up for discussion was the appropriateness of the citation he was going to make for that case.

For two or three years after the close of the war Chief Justice Salmon P. Chase came to Richmond regularly to hold the United States Circuit Court. On one of these occasions Mr. James Lyons, an eminent member of the Richmond bar, gave Judge Chase a dinner to which Mr. Green was invited. During dinner Judge Chase told an anecdote about Mr. Lincoln. He said that soon after the *Monitor* and the *Merrimac* had their bout in Hampton Roads, the Secretary of the Navy invited Mr. Lincoln, himself, and two or three other members of the Cabinet to take a little jaunt on a government steamer down the Potomac. Between Washington and Alexandria they came to a place where a cordon of logs and other obstructions extended from either shore to the channel, leaving just enough space for a good sized steamer to pass through. Mr. Lincoln asked the Secretary of the Navy what that was meant for. "Oh," replied he, "that has been constructed here to stop the *Merrimac* in case she should get up here." "Well," said Mr. Lincoln, "that reminds me of an anecdote. Once I was riding through my district in Illinois accompanied by a friend or two, and we came to a stream where several naked men were bathing. I said to one of my friends, 'I wonder why men were given udders.' 'Oh,' said he, 'it was to suckle babies in case they had any.'" Well, every one was on the go to laugh at the great man's joke and the laugh had got well under way, when Mr. Green cut in with, "Well, Mr. Chief Justice, Dr. Haxall there will tell you that there have been known cases where men have suckled infants."

emerged from the war, during which they had been constantly thrown with the most gallant and attractive men in the Confederate Army, and they had thus acquired an aplomb and a *savoir faire* excelling by far that of any set of young women that I have ever been thrown with. Amongst the men were to be found the choice spirits of the Confederate Army. There were youngsters who had won the stars of a colonel on the battlefield, when under twenty-one. All of the young men had served throughout the war in the ranks or with commissions, and this made a camaraderie amongst them that never existed anywhere else on the earth.

Into this delightful society I had free access, and that access left upon me a deep scar which I bore for a long time.

I was an awkward, gawky youth, some twenty-three years of age when I arrived in Richmond. My clothes were of the cut of the countryman and my ways and manners very much the same. There dwelt then in Richmond a young girl of nineteen, who was more beautiful and fascinating than Cleopatra was ever thought to be by either Caesar or Mark Antony. Her initials were M. R. Her eyes were of the deepest blue, her voice was softer and more tender than any strain in Tannhauser's Song to the Evening Star, and she had a soft poise and balance that captivated any man who fell under her influence the moment he heard her speak

a word. After arriving in Richmond I soon made the acquaintance of this fairy, and of course at once fell madly in love with her. Everybody knew how madly I was in love with her and everybody said, "What a fool that green young man Royall is to dare aspire to the hand of Miss M. R." She was courted by all the best men in the land. But that did not restrain me. All my life I have dared to aspire to whatever I want, and obstacles have only quickened my desires. I went on loving this fascinating creature and working out schemes deep down in my inner self for winning her. I soon declared my love to her, and was of course told that she could not think of me. Did that moderate my ardor? Well, I should think not. It simply increased it. I made that girl's life a burden to her. I asked myself always, "Why am I not as worthy of her as any other? No man can love her as I do. I shall win her." I persisted day in day out, month in month out, year in year out, and after a while I saw I was gaining a foothold. We had quarrel after quarrel, and for days and sometimes weeks we would not speak. But I saw she was yielding, and when I was alone I was ready to dash my head against the wall in recognition of the thought. In the end she yielded and admitted that she cared for me. No man can imagine what ecstasy I enjoyed while we were engaged. But clouds arose upon our horizon and

I can never forget that day we parted. I was a wounded man from the hour the separation occurred.

She was at a Virginia mountain resort that summer, and I, like a fool, went there. She was chaperoned by her friend, Mrs. T. D. A talented and charming old widow named Mrs. R. S. sat at their table with them. One night my friend E. F. told me Mrs. R. S. was going to seat a gentleman named R. J., who had arrived that day, at their table, and that Mrs. T. D. objected very much to his being placed there. I knew all about R. J. He was a little dissipated, but he was a gentleman and had served through the war with great gallantry as a Confederate soldier. I knew that what was in my mind would probably cause him to challenge me to a deadly duel, but that did not amount to a moment's consideration with me. The only thing that counted with me was the fact that Mrs. T. D. objected to his being at her table and that no doubt Miss M. R. shared in the objection. My life was of no moment where Miss M. R.'s wishes were involved. I at once said to E. F., "Mrs. T. D. is my relative, and if she does not want that gentleman at her table, he shall not be put there." I then went up on the long porch where I knew Mrs. R. S. was in conversation with R. J. I called her to one side and asked her if it was true she proposed to put R. J. at Mrs. T. D.'s table. She

said it was. "Then," said I, "you must not do it." In great surprise she asked why. I replied, "Because I do not wish it and will not allow it." She said she would put him there anyway. I replied that if she did it would become my disagreeable duty to take him away. She did not put him at the table, and I did not have the duel that I expected to result. I merely mention this incident, very disreputable to me, I admit, to show how deeply and desperately I loved that girl. As I have said, we separated, and she married a man who lived in New York. Though I had not spoken to her in two years, she wrote me a sweet note inviting me to her wedding. I did not go, but I went that night to a faro bank, where I lost all the money I had about me and also a handsome overcoat that had cost me $75, a sum to be taken notice of by us young rebels. I was heart-broken and became dissipated and lost ten of the most valuable years of my life. But in time I became my former self and married my present wife, Miss Judith Page Aylett, a great-granddaughter of Patrick Henry, who has made ample compensation to me for all that I lost.

One incident of the year 1873 in which I played a leading part made a great noise at the time. Miss Mary Triplett, one of the most beautiful women ever created by the Almighty, was at that

time a reigning belle in Richmond. Page McCarty, an attractive, devil-may-care sort of fellow, who then lived there, fell desperately in love with her, and it was generally understood that they had become engaged to be married. All at once Miss Mary broke off with him and went to Europe, where she stayed possibly a year. When she returned she would not speak to McCarty and would never afterward have anything to do with him. We had a german club that met once in two weeks. The club was usually led by a reckless, bright, audacious fellow named Sprigg Campbell. At one of their meetings Campbell contrived a figure that would throw McCarty and Miss Triplett together for a dance. It was a wanton act intended for cleverness. They met, commenced to dance, but after a turn or two, Miss Triplett disengaged herself and walked to her seat. Every one knew that she intended it as a slur on McCarty. It threw him into a desperate rage. He spoke of it to me after the german, and I have never seen a man more wrought up than he was.

Amongst the young men of Richmond at that time was one named John B. Mordecai. He was six feet two, about thirty-three years of age, and one of the handsomest men I have ever seen. He had served gallantly through the war as a private soldier in the Richmond Howitzers, was a fellow of the most delightful wit, and take him all in all,

I think he was about the most charming companion I have ever known. Handsome, gallant, chivalrous, affectionate, and witty, I have never seen his like. He, too, was desperately in love with Miss Triplett.

The night of the german and after it was over McCarty went to the *Enquirer* newspaper and offered them the following verses which the paper published next morning:

"When Mary's queenly form I press
In Strauss' latest waltz,
I would as well her lips caress
Although those lips be false.

"For still with fire love tips his dart,
And kindles up anew
The flames which once consumed my heart
When those dear lips were true.

"Of form so fair, of faith so faint,
If truth were only in her;
Though she'd be then the sweetest saint,
I'd still feel like a sinner."

I was a bachelor then and took my meals usually at Gerots' restaurant. The next morning after the german, I was in Gerots' getting my breakfast, and had just read these verses in the *Enquirer* when John Mordecai came in. He took up the paper and his eyes fell on the verses. He understood the whole situation at once, and I saw his face get

as black as midnight. Laying down the paper he said, perceiving that I understood the case, "I shall kill that fellow."

I remonstrated with him, telling him it was a matter that he had no right to interfere with; that Miss Triplett had a grown brother who would do whatever was proper to be done in such a case, and that he did not know whether she or her family wanted anything done. He would not be quieted, however, but went off to our mutual and very dear friend, Willie Trigg, to consult with him. Trigg told him exactly what I had told him, and between us we got him to promise to let McCarty alone.

That night I met him at the Richmond Club, and being seated together on a sofa he proceeded to denounce McCarty in the most unmeasured terms. A relative of McCarty overheard him and reported the denunciation to McCarty. At that time duelling was dying in Virginia, but it was very far from dead. McCarty sent a friend to Mordecai demanding a retraction and apology, which Mordecai refused to make. I knew that McCarty said he had not written the verses about Miss Triplett, but about another lady named Mary, and I intervened as a friend, and got the matter patched up upon the basis of the verses having been written about another person. Thereupon the matter was supposed to be closed.

But there were gossips in Richmond, and one,

a singularly beautiful and intelligent girl, made her tongue busy with insinuations that McCarty had backed out because he was afraid. These things came to McCarty's ear and put him in a terrible fury.

A short time afterward Mordecai entered the barroom of the Richmond Club where McCarty and Charley Hatcher were. Mordecai ordered a drink, and while it was being prepared McCarty walked up and down the floor right by Mordecai, making reference to the affair and making threats of what he would do the next time he got a chance. Presently Mordecai walked up to him and said, "Do you mean those remarks for me?" McCarty replied in the most insulting manner, "And who are you, sir?" Mordecai answered, "I am a gentleman, at least." McCarty said as offensively as possible, "Ah!" and Mordecai instantly struck him a powerful blow in the face which cut all the skin from over his left eye and felled him to the floor. Mordecai then jumped on him, seizing both his wrists, and had him pinned to the floor, when I, hearing the noise, rushed in and separated them.

McCarty at once sent Mordecai a peremptory challenge by Col. Wm. B. Tabb, and it was agreed that the duel should come off at once near Oakwood, McCarty to be represented by Colonel Tabb and John S. Meredith; Mordecai, by myself and Willie Trigg. The terms were that they were to

fire at ten paces. The command would be, "Fire—one, two, three." They could fire at any time after the word "fire," but not after the word "three." The weapons to be used were Colt's army revolvers, all six chambers loaded.

We placed the men, the word was given, both men fired, and both missed. Tabb said to McCarty, "Are you satisfied?" McCarty replied, "Oh, no. I demand another fire." I have quoted everything exactly. Again the word was given, both men fired and both fell. McCarty was badly wounded by a shot in the hip, Mordecai had been struck near the navel, the ball penetrating the intestines. He died on the fourth day after the duel. McCarty lingered a long time but finally recovered, and in a trial was fined $500 and sent to jail for six months. The Governor remitted the jail sentence on the doctor's certificate that it would endanger his life.

This was the famous duel between Mordecai and McCarty. There were several duels after this, but none of them fatal, and the duel in Virginia is now as dead as Chatham's ghost. I think Mordecai was one of the knightliest gentlemen that ever lived on this earth. He was shot on Friday, but did not die until Tuesday. Monday night peritonitis set in and all of Tuesday it was known he must die and he knew it too. They urged that he should send for a minister of the Gospel, but he

replied, "No, I shall die as I have lived," and he never uttered a whimper. An hour before his ending he sent for me. Putting his arms around my neck he pulled my ear down to his mouth and whispered, "Remember, Royall, what I told you." I answered, "I certainly shall, John." It was a message to his sweetheart.

As I was much mixed up in duels while they lasted, although bitterly opposed to them on principle and detesting the very mention of them, I shall detail here all that I propose to say of them.

In 1861 Bradley T. Johnson was a handsome, stylish-looking lawyer of about thirty-three. He lived at Frederick, Maryland, where he had at that time acquired much reputation as a lawyer and public man. He was an ardent secessionist on principle and believed that the time had come for the South to secede from the Union. When the Confederate Government was established at Richmond, he went there as captain of a company of infantry which he brought from Frederick. In a short time the Maryland companies were all consolidated into the First Maryland Infantry, and Johnson became its colonel.

There was no more daring and gallant soldier in the Confederate Army than Johnson. His regiment was with Stonewall Jackson in that renowned campaign of his in the Valley of Virginia in 1862, and it contributed most materially to win-

ning Jackson's prodigious reputation. Jackson, who knew a soldier the moment he laid eyes on him, was continually writing Jeff Davis and the Secretary of War, urging that Johnson should be promoted to brigadier-general, but Mr. Davis, hide-bound to one of his pet theories, always answered there was no Maryland brigade for him, as if we were not to have the services of the most useful man in the army if there was no command from his State.

When the second battle of Manassas was fought in the fall of 1862 the enlistment of the Maryland regiment had expired. They were disbanded, and Johnson was without a commission and without a command. He was riding at that time with Stonewall Jackson as a sort of volunteer aide. One of Jackson's Virginia brigades was without a brigadier and Jackson told Johnson he must take command of it. Johnson told Jackson he had no commission. Jackson replied that made no difference; that he was well known in the army as a colonel and wore the uniform of a colonel, and that if he went to brigade headquarters with his, Jackson's, order to take command of it, everybody would submit to his orders, and so the case proved to be. Though without a commission, Johnson made one of the greatest fights at the railroad cut with that Virginia brigade that was ever made in war.

At one time, after he had repulsed one of the several attacks and his ammunition was almost exhausted, he detailed all of the orderly sergeants to go out on the field and get all the cartridges on the dead Federals. While the orderly sergeants were all in a group dividing this ammunition a shell burst amongst them and prostrated the whole crowd. This of course produced a very demoralizing effect on the brigade, which was under a heavy artillery fire, and Johnson, calling the men to attention, put the brigade through the manual of arms as though it had been at a holiday picnic.*

Johnson came back into the service, and finally his splendid services compelled the administration to make him a brigadier-general, with which rank he served to the end. He settled at Richmond when peace came to practice law, and he had very great success from the beginning. By 1873 he

*Johnson told me the following incident of the first battle of Manassas. He was then major of the First Maryland Infantry. His regiment was part of the force which Joseph E. Johnston brought from the Valley in time to take part in the battle. Col. Arnold Elzey commanded a regiment that day in Gen. E. Kirby Smith's brigade, and he was senior colonel and would be brigadier-general if anything happened to Smith. He was very ambitious, and was heard to mutter when buckling on his sword that morning, "Six feet of ground or a yellow sash to-day."

Johnson's regiment was double-quicked from the depot to the battlefield, and when Johnson got there his tongue was hanging out. He went up to Elzey, who was also from Maryland, and asked him if he could not in some way get him a horse. Just then the enemy fired a volley and Smith fell off of his horse badly wounded. "There," said Elzey, "God is just. Go and get Smith's horse."

was a man of very independent means, and in that year he offered me a partnership, which I very gladly accepted. We were as intimate friends up to the day of his death as ever lived. No two brothers could have been closer, and I loved him tenderly and sincerely.

William Mahone was born in Virginia in one of the counties south of the James River, between Petersburg and Norfolk. He received a military education at the Virginia Military Institute, and this enabled him to get the command of a Virginia regiment of infantry at the beginning of the civil war. He was very soon given a brigade of five Virginia regiments, so that it may be said that he commenced the war as a brigadier-general. His brigade was one of the finest in the Confederate Army, and it did some of the most heroic fighting that was seen during the war. Mahone was a splendid organizer and looked after his men with the most careful attention, so that the brigade was always in first-class condition. The senior colonel in the brigade was D. H. Weisiger, who became brigadier-general commanding the brigade when Mahone was made major-general. Weisiger commanded the brigade in almost every engagement it was in. He has frequently told me that he never saw Mahone under fire and that he never commanded the brigade in a single action.

In July, 1864, General Grant blew up a part of General Lee's lines in front of Petersburg with a mine that he exploded. Lee had known of this mine for some time, and had concentrated an artillery fire on the point that made it simply impossible for any troops to come through the gap made in the lines until he was able to reinforce the point. Two brigades of Mahone's division, the Virginia brigade and the Georgia brigade, were brought up by a covered way to retake the position then occupied by a large force of Union troops. Mahone's brigade, under Weisiger, marched out of the covered way, leaving Mahone in it, formed in line some hundred yards from the point of attack, and charged the enemy occupying our lines. It was a heroic act and was perfectly successful. Just as poor old Weisiger had got possession of our lines and of everything in them, he was shot through the body. He was carried back to the covered way to where Mahone was. Weisiger gave me this account of what occurred. Mahone said, "Weisiger, why in the hell are you and old Joe Johnston always getting yourselves shot?" Weisiger said he thought it was all over with him, and he was therefore a little indifferent about insubordination, and so he answered, "General Mahone, if you would go where General Johnston and I go, you would get shot sometimes, too."

Possibly I am not doing Mahone justice in this

sketch of him, because I hated him and he is the only man I ever hated. For a number of years he was engaged in a deliberate attempt to dishonor my native State by forcing a repudiation of her public debt, and in the contest which grew out of that attempt I came to hate him. My feeling toward him may be judged of by the following incident.

In some way or another, all at once, a marble bust of Mahone appeared in the State Public Library amongst her dignitaries and honored sons. Everybody resented it, and I made a diligent effort to find out by what authority it was put there; but always found that whenever I got to the critical point and was just about to find out something that would count, all sources of information suddenly closed up and I could get absolutely nothing. In one of the suits about our public debt which I carried to the Supreme Court of the United States (a full account of this whole matter will be given later on), the Supreme Court reversed the judgment of the Hustings Court of the city of Richmond and gave me costs against the State, amounting to something like $120. I applied to the Hustings Court of the city of Richmond for an execution against the State and it was given to me, and I instructed the officers to go into the Public Library and levy the execution on Mahone's bust and nothing else. I intended to buy it at the sale, and

then publicly smash it into small fragments on the public square. The officer went into the Capitol building to do as I had directed, but Fitzhugh Lee, who was then Governor, hearing of the affair, had the officer forcibly ejected from the building, and he refused to make any other levy and so I failed to get Mahone's bust and lost my costs also. We will go on now with Mahone.

He was as vain, conceited, and egotistical a little chap as ever had anything to do with Virginia's affairs. At the end of the war he had a very considerable military reputation, but some soldiers said it was a reputation made for him by the newspapers. It has always been persistently claimed that he kept a newspaper correspondent hanging about his headquarters to write him up upon all occasions. However that may be, the following are undoubted and, in the main, recorded facts.

In June, 1870, there appeared in the *Historical Magazine,* of New York, a monthly of great influence and importance, an article entitled, "A Military Memoir of William Mahone, Major-General in the Confederate Army," by Gen. J. Watts De Peyster. The article stated that it had been submitted to General Mahone before publication, and that it was approved of by him. The article was, perhaps, one of the most fulsome that was ever approved by any man. It said that Mahone was a

better soldier than Longstreet, and the equal, and in some respects the superior, of Stonewall Jackson. All this would have passed with nothing but the contempt of judicious men if it had been all. But it was not all. The article went on to disparage some other soldiers, and Gen. Jubal A. Early amongst them. I knew General Early very intimately, and if Mahone had asked my opinion before he published his article I should have told him to be careful about what he said of him. General Early was a rugged character, but one of the loftiest, sincerest, and most loyal men that ever lived, and the last man in the world to submit to an injustice. Accordingly, when he learned of this article he wrote Mahone a note calling his attention to the unjust references to himself, and Mahone, being then in the pride and plenitude of a power that I will explain further on, treated Early's note in the most cavalier manner, and made no answer at all. Thereupon General Early wrote him a twenty-page letter reviewing his whole career in the war and out of the war. It was such a letter as no one man ever received and submitted to in the history of the world. In those days of duelling it meant a fight.

Well, Mahone had no stomach for a fight, and so he got a number of the most prominent people in the State to intervene, Gen. Bradley T. Johnson amongst them, and the matter was adjusted upon

the basis that Mahone should have the article republished in the *Historical Magazine* with all the offensive references to General Early omitted, and this was done. It was the general understanding at the time that the republication cost Mahone $10,000.

When the war ended, Mahone, by reason of his newspaper military reputation and the wide acquaintance with men that his high position had made for him, had a large following, and he was ambitious and eager to use such position as he had made for himself for all that could be made out of it. There was a railroad that had been built before the war from Norfolk to Petersburg, called the Norfolk and Petersburg Railroad. There was another called The Southside Railroad that ran from Petersburg to Lynchburg, and another, The Virginia and Tennessee, that ran from Lynchburg, Virginia, to Bristol, Tennessee. Now these roads made a continuous line of more than four hundred miles. The State of Virginia owed a large public debt, and the money that she owed had been borrowed to contribute to the building of the various railroads in the State. In this way she owned the controlling voice in the three railroads named. Directly after the war Mahone set himself to work to control the Legislature of the State. He got control of it and induced it to consolidate the three roads named into one road, The Atlan-

tic, Mississippi and Ohio. The State voted him president of the new road with a salary of $25,000 a year. Thereupon Mahone became a very great power in the State and aspired to its absolute control.

Along in 1874-75, Gen. Bradley T. Johnson having acquired a competence in the practice of law, desired to go into public life, and he commenced by going into the council of the city of Richmond. Mahone knew instinctively that Johnson in public life meant danger to him, Mahone. When the election for the City Council was to come off, Mahone, who lived in Petersburg, came over to Richmond and installed himself in the *Richmond Whig* building (the *Whig* newspaper being generally understood to be owned by him), and Johnson believed that he had done it with the intention of interfering with his election. Accordingly, Johnson scattered a circular all over the city informing the people of the facts as he believed them to be, and urging the people to turn out and vote down this interference with their affairs. Mahone, thereupon, enclosed one of these circulars to Johnson and asked him if he was its author. Johnson replied that he was. Mahone answered, denouncing it as a malicious falsehood, and, of course, in those days that meant a duel.

Johnson and I conferred over the matter, and Johnson said he would challenge Mahone to a duel.

He said Col. R. Snowden Andrews was the most distinguished Maryland soldier then alive, and that he wanted him to act as his second. But Andrews was away from Richmond and he feared Mahone might make some publication of the affair before he could get him here. It was therefore agreed between us that I should take a note to Mahone informing him that Andrews was telegraphed for and that as soon as he arrived a hostile note would be sent him. I took this note to the *Whig* building and delivered it to Mahone, and this was the one solitary interview that I ever had with him, though our lives touched at many points from that time on to the time of his death. The Virginia Constitution disqualified any one to hold office who took part in a duel. As Johnson was going into politics he did not want to send a challenge and thus disqualify himself if there was to be no duel, so Andrews arranged with Mahone that all parties would meet at Weldon, North Carolina, at a given time, and that he would there give the final challenge when nothing could interrupt the duel. Johnson went to Baltimore, went down the bay to Norfolk, took the train to Weldon, and was at the appointed spot at the appointed hour. Mahone went to Norfolk and was there arrested on the charge of being about to engage in a duel, and was bound over to keep the peace.

He had got that chivalrous gentleman, Cap-

tain James Barron Hope, to act as his second, and Captain Hope came to Weldon and reported Mahone's arrest and gallantly offered to take his principal's place in the duel. Colonel Andrews promptly declined the offer upon the ground that General Johnson had no sort of quarrel with Captain Hope, but on the contrary had the highest respect for and regard for him, and could not think of engaging in anything hostile to Captain Hope.

The next duel or "fiasco" that I was connected with was between General Kemper and General Mahone. Kemper was the commander of one of those Virginia brigades that made that immortal charge of Pickett's division at Gettysburg and he had been left for dead upon the battlefield. He recovered from his wound and had been since Governor of Virginia.

One day I met that sturdy old warrior, Gen. Eppa Hunton, who commanded the Eighth Virginia in Pickett's charge at Gettysburg, and he told me General Kemper wanted to see me at the Exchange Hotel. I went to see Kemper, and found him with a note from Mahone asking him if he had been correctly reported in a reference to him in the *Dispatch* newspaper, and he asked me to represent him in the affair. The reference was this. We were then in the midst of the political campaign in which Mahone led a party that proposed

to repudiate a great part of the State debt. I was making speeches over the State for the support of the public credit, and Kemper was doing the same. At a public meeting at Prince George Court House, a short time before, Kemper had said, "What would you do, people of Prince George, if a man should come to you urging you to do with your private debts what William Mahone is urging you to do with your public debt? You would drive him out of your county to the tune of the rogue's march."

Well, there was a good deal of correspondence conducted for General Kemper by Gen. Jubal Early and myself which finally resulted in Kemper saying in effect he said that and he said nothing else, and Mahone saying in effect if that was all Kemper said he was satisfied.

The next duel I was connected with was between Col. Thomas Smith of Warrenton, Virginia, and W. C. Elam, editor of the *Whig,* the organ of the Readjuster or Repudiator party, and there was nothing sham about that duel, I promise you. Colonel Smith was the gallant and fearless colonel of the Thirty-sixth Virginia Regiment of infantry during the war. His honorable father had been a member of Congress from Virginia before the war, and had also been Governor of the State before the war. At the age of sixty-four he had taken the field at the beginning of the war as

colonel of the Forty-ninth Virginia Infantry, and had gone up by successive promotions won by wounds upon the battlefield to the rank of major-general. In 1864 the people of Virginia took him from the field and made him their Governor again.

One evening I got a telegram from Colonel Smith asking me to come to Washington City. I went, and found him accompanied by Gen. Wm. H. Payne, Capt. A. D. Payne, and Bernard P. Green. They showed me an editorial article in the Richmond *Whig,* which contained a scandalous, offensive and false reference to Colonel Smith's father, and Smith declared his intention of holding its author to a personal account. I was a bachelor then, and lived in a small house all to myself, with my body servant, the most reliable colored man I ever knew. He was a prince in his race. So I said, "Come along, gentlemen. I'll stow you away in my house and we'll fix matters up, and have the affair to come off *secundum artem.*" So they all came to my house, and I stowed them away under cover of night.

Green made the arrangements for the duel, which was to take place at sunrise near Oakwood. I knew the firm of Tignor & Co., gunsmiths, had a pair of duelling pistols that had been used in a duel between Colonel Cameron, afterward Governor of the State, and Robert W. Hughes, afterward United States District Judge of Virginia, in

which Cameron had been badly wounded. I was afraid to go to Tignor's myself lest I might arouse suspicion, so I got my friend, Corbin Warwick, to go there and get these pistols. Tignor sent with them powder and ball and a small powder flask, which had a very small powder measurer. He had told Warwick to use two of these measures when loading, but Warwick had forgotten to tell me that. When I came in with the pistols Colonel Smith called attention to the small charge of powder that the flask gave and insisted the charge should be doubled. But I insisted the man knew how to load his own pistols, and was so insistent about this that they all acquiesced. I saved Elam's life by it. The pistols were loaded with this small charge and when the parties fired Smith was unharmed, but he hit Elam squarely on the chin, smashing that organ into tatters. If the pistol had had a full charge of powder the ball would have gone through Elam's neck and there would have been no more of Elam. Elam was unable to continue the duel and it ended there.

My friends bought the pistols and had inserted into the stock at the breech a silver scroll on which is engraved, "To William L. Royall, from his friends, Col. Thomas Smith, Gen. Wm. H. Payne, Captain A. D. Payne, Bernard P. Green." They presented them to me, and I prize them very highly as a memento of four very dear friends who were as high and typical Virginians as ever lived.

The next duel that I was connected with was between Richard F. Beirne, editor of the *State,* an evening newspaper published in Richmond, and the same Elam, editor of the *Whig,* the organ of the Readjuster or Mahone party.

When Mahone and his Readjuster party got possession of the State in the election of 1879, of which I shall give a full account further on, I saw there was no more chance for me in Virginia, so I pulled up stakes and moved to New York City to practice law. The feeling between parties in Virginia became bitterer in that political contest than it ever was anywhere in the world, I believe. I will tell all about it when I reach that part of my narrative, and I may, perhaps, be able to paint it so as to make those unacquainted with the facts realize to some extent how intense the feeling had become.

I had been selected by the creditors of the State of Virginia to represent them in the enormous litigation that grew up between them and the State of Virginia as the result of Mahone's triumph, and I was in Richmond attending to some matters involved in that litigation. Bierne in his *State* newspaper had been taunting the Readjuster party with all the sins that we imputed to them, with exceedingly mild replies from the *Whig.* But one morning the *Whig* appeared with one of the most insulting articles, aimed directly at Beirne,

that it is possible to conceive of. Beirne lived at Ashland, a village on the Richmond, Fredericksburg and Potomac Railroad, about fifteen miles out of Richmond, and he read this article in the morning before he came into the city. He immediately wrote a challenge to Elam, and knowing I was in Richmond he sent it by his brother-in-law, a lad of about nineteen, to me, with the request that I deliver it to Elam and represent him as his second in the duel. Beirne then put a pair of duelling pistols into his buggy and drove off to Hewlett, a station on the Chesapeake and Ohio Railroad, where he could be communicated with by telegraph.

The young gentleman delivered the message to me. "Now," said I to him, "I think this is pretty hard on me after the part I have been compelled to play in these affairs to drag me thus into another. This is a political quarrel, and I have quit Virginia and am no longer connected with her politics in any way. Beirne ought to have sent his message to one of the Virginia politicians, who are the people on whom this burden rests. However," said I, "Beirne must not be left in the lurch, whatever takes place. You go and deliver this note to Elam, and tell him I will provide some one to make the necessary arrangements or will act myself." I then hunted up Capt. Geo. D. Wise, the member of Congress from that district, and told him some of them should take up the representation of

Beirne. He conceded it, but said he did not see why it should fall upon him. "Then," said I, "let us throw up heads and tails whether you shall represent him or I shall." He agreed to this, we threw, and I won.

I immediately sent word to Elam that I was ready to go on with the affair, and he sent to me a Mr. R. and a very notorious character who was called "J." This old fellow was said to have been imported from Missouri. He had only one eye, but cunning and craftiness lurked largely in that one. As soon as we met I said, "Well, gentlemen, when shall the affair come off?" They insisted that it should come off that afternoon in the vicinity of Richmond. "But," said I, "gentlemen, I have already told you Mr. Beirne is at Hewlett, forty miles from Richmond, and it is impossible for me to get him by that time." They insisted, however, that it must be that afternoon, and I instantly suspected a little bluff. "Very well," said I, "you are two and I am only one. Wait here a few moments and I will get a friend so as to be on a footing of equality with you." I went out and brought back with me Captain Wise. "Now," said I, "I am ready for business. Do you still insist that the affair shall come off this afternoon?" They said they did. "Very well, then," I said, "I withdraw the challenge." They saw at once what I meant, which was that I would bring

Beirne to Richmond and renew the challenge and be ready to fight at any moment. Then they got reasonable. They asked me when I could be ready. I said they understood the facts as well as I did, but I would suggest that we meet the next afternoon at six o'clock at Hanover Junction, which was about half way between Richmond and Hewlett. This was agreed to. Then I said, "What weapons shall be used?" They replied, "Colt's navy revolvers, all six chambers loaded. The parties to fire at the word, and if neither falls, to advance and continue firing until one or the other is disabled." This was murder in the first degree without extenuating circumstances, but I accepted instantly. I then asked them at what distance the parties should be placed from each other, and they said eight paces. This tremendously increased the barbarity of the thing, because at only eight paces the length of the Colt's revolver removed all possibility of missing. But I accepted instantly. I then asked who should bring the pistols. They said that as they were the challenged party they claimed the right to bring them, and I conceded it.

I should have said that when Beirne sent me his message he said that he had telegraphed for Page McCarty who was in Washington as the regular correspondent of his paper, and that he only desired me to act until McCarty arrived.

Next afternoon I was at Hanover Junction be-

fore 4 o'clock. Soon after one of their representatives arrived, and I asked him if he had brought the pistols. He said he had, and instead of the navy revolvers prescribed he produced a pair of small pocket revolvers that you could not hit a barn door with at ten paces. "Why," said I, "how is this? You prescribed navy revolvers and you have brought these playthings." They said they had been unable to find a pair of Colt's navy revolvers. I then served written notice on them that we refused to fight with the weapons they had produced, first, because they were not the weapons they had prescribed, and second, because they were not dangerous weapons. "But," said I, "Mr. Beirne has a pair of dangerous duelling pistols here of which he offers you the choice." This they declined, saying that the fight must take place with the pistols they had brought or not at all. By this time Beirne and McCarty had arrived, and I retired as manager of the affair. Beirne was so set upon fighting that he agreed, against my remonstrance, to fight with the small pistols, and just as all parties were preparing for the fight a party of Richmond police drove up and arrested us all. I never knew how the police got on to the affair. I know I did not let it out, and no one who knows Captain Wise will believe he did.

Beirne was bitterly chagrined. While we were all standing around the depot and discussing the

matter, a train pulled up on the Chesapeake and Ohio, going west, and Beirne deftly stepped on it when the officers were not looking and sped off to the west. In a day or two McCarty and I got into communication with him, and he asked us to renew his challenge and have the duel come off in the Valley of Virginia where he was, and where there would be no danger of interruption. We renewed the challenge, and this time we got into negotiations with "J." and Col. Joseph Minitree, a sure-enough Confederate colonel who had unfortunately gone off with Mahone. There was no bluff or humbugging about him. McCarty and I met "J." and Minitree at the Exchange Hotel. When everything else was arranged I said, "How about the weapons?" "Oh," said "J." with a great air, "we have the right to furnish the weapons and we will provide the same pistols we carried to Hanover Junction."

Now, the whole country was full of the Colt's army revolver, which was the weapon that both the Confederate and the Union cavalry used during the war, and when the enemy prescribed "Colt's navy revolvers" at our first meeting I understood them to mean army revolvers, which went by the names indifferently of army revolvers and navy revolvers. But when they came to Hanover Junction with little pistols they explained to me that it was the technical navy revolver that they meant,

and that they had been unable to find a pair of technical navy revolvers. That was the first time I ever learned that there was a difference between the Colt's navy revolver and the Colt's army revolver. The "navy" is a shade smaller than the "army" but just as dangerous a weapon.

So, feeling sure that Beirne was going to renew the matter, as soon as I got back to Richmond I instituted quest for a pair of technical navy revolvers, and soon got a superb pair of them. I notified "J." that I had them and that they would be at his service when we renewed negotiations. When we had arrived at the point when "J." said they would produce the same small pistols for the fight, I said that was perfectly satisfactory to us, but it must be inserted in the cartel that we had got a pair of technical navy revolvers the use of which we tendered for the duel. "J." kicked violently against this, but I stood firm, and presently Minitree spoke up and said, "Oh, hell, 'J.,' you have backed down, and why not say so!" Thereupon it was inserted in the cartel and stands there to-day that Beirne's friends had procured a pair of navy revolvers and had tendered the use of them to Elam's friends, but that they had declined to use them and insisted on fighting with the small revolvers.

The fight came off, and at the first fire Beirne

shot Elam in the thigh and the duel was stopped at that point.

This ended my experience with duels. After an experience so elaborate as mine it sounds strange to hear me say I never approved of duels but always detested them in my secret heart. The system was founded on coercion rather than reason, and coercion, in whatever form, I have always abhorred. But one must understand society as it existed in Virginia to understand my participation in them. It was the general understanding that the man who did not fight when he was insulted or the man who refused to fight when challenged had a smirch upon him from that time on. Some ten years before the civil war Mr. McGowan of South Carolina had a duel with a Mr. Cunningham in which McGowan was desperately wounded. McGowan became a very distinguished general officer in the civil war. After the war a friend of mine met him at the Greenbrier White Sulphur Springs and asked him what the duel between him and Colonel Cunningham was about. "Well," said General McGowan, "I never did clearly understand what it was about, but you know it was at a time when all gentlemen fought." Although, as I have said, I utterly detested the whole business, yet I should have challenged a man that I thought I was called on by public opinion to challenge and I would have accepted a challenge if it had been

given to me. Thank God the whole sentiment and opinion of the people has changed, and if a man killed another in a duel in Virginia now I think he would stand a very fair showing for the gallows.

CHAPTER III

THE STATE DEBT—THE PRESIDENCY

About 1830 the State of Virginia embarked upon the policy of aiding works of internal improvement. She sold her bonds bearing six per cent. interest and subscribed to the stock of canals, turnpikes, and railroads. She paid her interest on these bonds regularly until the civil war broke out, but she paid no interest on them after that date. At the end of the war her debt amounted, principal and overdue interest, to more than $40,000,000.

There was a bogus government of Virginia during the war at the head of which a man named Pierpont figured, which dodged about around the borders of Virginia during the war. Near the end of the war Mr. Lincoln recognized this as the government of Virginia, and in 1865 Pierpont called a legislature together. This body met in Richmond, and was composed of as fine a set of men as ever gathered together in the State. Virginia was prostrate. Her slave labor, on which her agriculture depended, was suddenly freed; the armies had destroyed most of her fencing and taken from her people almost all of their stock; there was no

money in circulation, and, in a word, the poor old State, ravaged and prostrated, was in the depths of woe and despair. The State's bonds were owned in the Northern States, but principally in England. Many communities in that condition would have taken the ground that as the money was loaned upon the faith of the slave labor, since the slaves were set free the debt would no longer be recognized. But that sort of action never came from Virginia when she was herself and this legislature was elected by the white people of Virginia before there was any infusion of negro blood into her body politic.

In December, 1866, her Legislature unanimously passed the following resolution:

Whereas the public credit of the State of Virginia and the credit of our citizens has been injured and is now being injured by the apprehension that this General Assembly will repudiate the debt of the State and authorize the repudiation of the debts of her citizens; and whereas we deem it important to remove this apprehension from the minds of all persons, and so to remove it at once; and whereas if the intention existed on the part of the General Assembly to pass any repudiating act the constitutions of both the State and Federal Government positively prohibit the passage of any such law; and in order to prevent any further injury to our credit, therefore

1. Resolved, That the General Assembly will pass no such acts of repudiation.

2. That such legislation would be no less destructive of our future prosperity than of our credit, our integrity and our honor.

So spoke Virginia in her sackcloth and ashes, the last time that the real Virginia had an opportunity to speak.

In 1869 the wretched reconstruction acts of Congress had overthrown this true government of Virginia and had set up a government based almost equally upon negro as well as white suffrage. The white people of Virginia, however, controlled the Legislature. In 1871 the Legislature took up the subject of the public debt. When the debt was being created West Virginia was a part of Virginia, being about one-third in point of population and territory, and Virginia had thought that as West Virginia had participated in the borrowing, she should take her share in the paying. The debt was then about $45,000,000 principal and interest. In 1871 the Virginia Legislature passed an act which provided for Virginia assuming two-thirds of the debt and assigning one-third to West Virginia. The act provided that if a bondholder would deposit his bond with the State of Virginia she would give him her new bond for two-thirds of the principal and overdue interest (the interest being capitalized), bearing six per cent. interest, and a certificate stating that West Virginia owed him the other third. As an inducement to him to do this the act provided that the new bond should bear tax receivable coupons to represent the interest; that is, the coupon bore upon its face the State's

contract that it would be received for its face value in payment of all taxes, debts, and dues to the State, so that the State would be unable to collect any taxes until she had provided for these coupons. The bondholders jumped eagerly to the acceptance of this offer, and in a short time $20,000,000 of the new bonds had been issued bearing these coupons, which made a first lien upon the State's revenues of $1,200,000 per annum. When the funding had gone to this extent the Legislature repealed the funding act and thus put an end to the funding scheme.

This presented William Mahone, of whom I have given a sketch in the preceding chapter, with his opportunity. The negro vote nearly balanced the white vote in the State and the negro always votes solidly against what he thinks the white people favor. He was as ready to vote for payment of the debt as for the repudiation of it, or for the repudiation of the debt as for its payment; all he wanted to know was, which way the white people were going to vote, and then he was going to vote the other way. Mahone, knowing this, resolved to start a new political party based upon this enormous negro vote.

The people of Virginia were all ruined by the war, and even a slight taxation was excessively burdensome to them. The chance was most favorable therefore for him to appeal to the white people.

The $1,200,000 of coupons that had to be paid before any money could be raised for the public schools and for the charges of government required a rate of taxation that was very trying, therefore Mahone, who had run his railroad into bankruptcy and been turned out of its presidency, now came forward with a proposition to "readjust" the State debt, which "readjustment" was nothing but an euphemism for a plan to repudiate a large part of the debt. He knew he could have all the negroes for his plan and all the worthless element of the white people, and he thought these two would certainly control the State. He got all the negroes and all the worthless whites, but he got also a considerable following of sturdy and honest white men, who, resentful of the proposition to pay when the war had deprived them of the means of paying, refused to assent to the payment of the debt.

But the serious question confronted Mahone, "How are you going to 'readjust' the tax receivable coupons?" No public declaration was made of the way this difficulty should be met, but the plan resolved on was that the courts of the State should be filled with "Readjuster" judges who would pay no attention to the fundamental law of the land, that is, the Constitution of the United States, but would make all rulings necessary for the exclusion of the coupons from the treasury. This became a

cardinal proposition in "Readjuster" policy. Party lines were drawn, and Mahone with his Falstaff party of Mouldy, Shadow, Wart, Feeble, and Bull Calf, and the white people of Virginia upon the other side, went before the people in the fall of 1879 for the election of a Legislature. Mahone won and had a considerable majority in both branches of the Legislature, and this body proceeded at once to elect Mahone to the United States Senate.

I will suspend this narrative at this point to tell of some events that happened along here contemporaneously with the progress of the State debt fight.

When Mahone, through the negro vote, triumphed in the State, and placed the stigma of repudiation on Virginia's escutcheon, which had theretofore been without a blemish, I, in common with all other true Virginians, was deeply grieved and mortified. To try and stem the torrent that threatened to submerge all that was decent and manly in the State, I determined to abandon my profession and start a daily newspaper. I did this and established at the beginning of 1880 a newspaper called *The Commonwealth*. This is to be seen in the libraries at Washington and at Richmond, and it testifies for itself how I performed the part that I had set for myself. It is enough for me to say here that I made it very hot for the Readjusters.

Along in the spring of 1880 the Federal authorities commenced prosecutions against our judges for not putting negroes upon juries. This raised a profound sensation in the South, and it stirred me as deeply as had repudiation. I went into that fight with my newspaper with all the vigor in my nature. The State carried the question before the Supreme Court of the United States, whether Congressional enactments that dragged her judges before Federal courts were consistent with the Constitution of the United States. The Supreme Court upheld the acts of Congress, but Mr. Justice Field and Mr. Justice Clifford dissented. Justice Field in his dissenting opinion contended for a construction of the Constitution that was so necessary to the poor, wounded, bleeding, downtrodden South, and that was so fair and just to all sections that I threw my hat into the air and called out to my fellow citizens, "This is the man for the Democratic party to nominate this summer for President!" From that moment I put my paper to work to try and secure Judge Field's nomination. We had a primary election in Richmond to select delegates to the National Democratic Convention from that Congressional district, which was to meet at Cincinnati in June. I was elected to represent our Congressional district, with my dear friend Judge E. C. Minor, judge of the Law and Equity Court of the city of Richmond, one of the noblest fellows

that ever lived, as my associate. I had made a great impression with my paper on the whole South for Judge Field, and if the Pacific Coast had been for him he would certainly have been nominated. But from the time Judge Field had been made a Federal judge he had been smashing Dennis Kearney and his associates, and the Democratic party of the Pacific Coast was pretty much composed of that element. When we got to Cincinnati we found the Field sentiment triumphant everywhere except amongst the Pacific Coast delegates. There we found the most determined opposition to Field, and this lost Field the nomination and the Democratic party the election. I quote here a letter which I wrote from Cincinnati to my paper, the local coloring of which may still give it interest:

Cincinnati, June 25, 1880.

I feel that I have been delinquent to the readers of the *Commonwealth* in not informing them before this of what I have seen and observed here. But the pack and the jam, the hurry and the bustle, the absolute confusion that has prevailed at all times and all places since I arrived must be accepted by your readers as my excuse.

The convention has been one of the most memorable ever held in American politics. I should deserve to lose the confidence of my readers if I said I think the nomination the strongest that could have been made.

I have been warning the public through the columns of the *Commonwealth* for months against the danger of nominating a soldier. I have been urging upon it that

the true strength of our fight was the fact that we were fighting for a government of civil law as against a government of force, and that to make a soldier our nominee was to emasculate in some degree the strength of our claim. The enthusiasm which we have witnessed here (and it has been something wonderful) since the nomination was made has not changed my opinion upon this point.

The place was full of Democrats, not Republicans, and the ten or fifteen thousand persons that we heard clamoring were but a fraction of the fifty millions of people in the United States. Holding these views I was the last member of the Virginia legislature to consent to the nomination of General Hancock, and I never did give my assent to it until he had received votes enough to nominate him. The pressure which I had to resist to this end was as much as I was able to endure. The call of the roll of States was hardly finished when it was obvious that General Hancock would be nominated.

Wisconsin, which had been divided, had moved to change her vote and make it solid for Hancock. This was the beginning of a general stampede. State after State arose and announced that her vote should be changed and made solid for Hancock. Every person in the immense hall was on his feet; cheers rent the air. The Louisana banner, bearing a superb portrait of the General, was rushed to the stand and waved over it; the small banners that marked the location of the delegates from each State were snatched from their fastenings and carried forward by enthusiastic men and grouped around the Louisiana banner; the whole enormous mass of human beings was absolutely mad. There was no sense, no reason, no judgment anywhere. The following incident is amusing and characteristic also. Coming around to the hall in the morning my colleague, dear old Ned Minor,

said to me, "Royall, I see a strong disposition to break all ranks and nominate Hancock. I don't believe in doing it and I am not going to be carried off my feet into any such scheme." "Minor," said I, "those are exactly my sentiments, and I intend to stand out firmly against it." Would you believe it, that when the rush set in and the enthusiasm passed beyond control, Minor was one of the first to go over to Hancock? He was standing in his chair next to the West Virginia delegation and their banner was tied to Minor's chair. An enthusiastic West Virginian snatched the banner up and, in doing so, upset Minor's chair and landed him flat on his back on the floor. I looked down at him and said, "Lie there, sir, as a fit punishment to you for your treason."

The Virginia delegation, equally carried away by the prevalent enthusiasm, wanted to have Virginia's vote declared unanimous for Hancock. All of them except myself had agreed to it. My intimate friends of the delegation crowded around me and urged me by every consideration to come in. I refused to allow my judgment to be carried off its feet. At last I was told that he had received the necessary 492 votes and therefore was nominated. I then told our Chairman, Mr. Bocock, that he might announce that Virginia gave her twenty-two votes for him. The confusion was so great that Mr. Bocock could not get the attention of the chair. He had to go to the desk. It then occurred to me that possibly there was a mistake, and I went to the clerk's desk and counted the vote and found that he had received only 470 votes. I rushed to Mr. Bocock and got near enough to exclaim to him just as he was about to announce Virginia as unanimous that I refused to vote for General Hancock, and he accordingly cast her last ballot twenty-one for Hancock and one for Field. Soon after that another State changed and another, and he had the necessary number, whereupon I told Mr.

Bocock that he might announce Virginia as unanimous and it was then done. The Louisiana banner bearing the General's portrait being brought to the stand and waved in the face of the convention caused the nomination. A frenzy seized every one. Every one thought it indicated that he was nominated, whereas he lacked a hundred and fifty votes. Every one wanted then to be on the band wagon, and so every one was then in a hurry to have his vote changed to Hancock. But for this singular coincidence I do not believe General Hancock would have been nominated. We have nominated a brave, true, chivalrous gentleman, compared with whom, personally, Garfield is a small potato, but I fear we have not developed the full strength of our cause. However, we want to see the journal that will do more loyal and energetic work to secure General Hancock's election than the *Commonwealth*. I believe that if the delegates from the Pacific Coast had backed Judge Field with anything like unanimity, nothing could have prevented his nomination. It was the unanimous sentiment of the delegates from at least two-thirds of the States that he was the man to nominate. Had his Coast come forward and demanded his nomination nothing could have averted it. But it was impossible to get anything like unanimity from them in his behalf. I found this matter to be just as I had expected.

From the time of his appointment to the Supreme Court bench, Judge Field has been holding his court in California and smashing Kearneyism and Communism whenever he could get an opportunity. That element of the Democratic party is his bitter enemy, and unfortunately for the Democratic party, it is largely composed there of that element. Those delegates who represented constituencies in which Kearney is thought a statesman could not be induced to support Judge Field. Kearney himself

was at Cincinnati working with might and main against him. It was generally conceded by the Pacific Coast delegates that he could carry the Pacific Coast States, which no other Democrat could, for the reason that what he lost in the Kearneyites refusing to vote for him he would more than make up from the Republican ranks. I always thought his nomination would have been the wisest thing the Democratic party could do, and I have seen no cause to change my opinion. The most notable action taken by the Convention was its exclusion of the Tammany delegates. As soon as it became known that the Tammany delegates would contest the seats of the regular delegation, it was obvious that the most serious fight that would take place in the convention (the nomination of President being left out of the account) would be before the Committee on Credentials. This committee was to be composed of one from each State—thirty-eight in all—and the Virginia delegation conferred upon me the honor of making me their representative. We met at 8 P. M. of Wednesday, the 23d. Judge Comstock, Judge Amasa J. Parker, Mr. Moak of Albany, and John Kelley himself appeared before us to represent the Tammany side, and Genl. Faulkner, chairman of the New York delegation, Mr. Fellows a member of it, and Ex-Governor G. C. Walker with some others represented the regular Democracy.

I listened carefully to the discussion and got at the real state of affairs. The Tammany delegates were distinctly bolters and independents, and we could not have admitted them to seats in the convention without giving the sanction of the National Convention to bolts at the pleasure of every sorehead. Their case rested upon these grounds. The first was that they represented 77,000 voters. We, whose duty it was to inquire what persons claiming to be accredited representatives of Democratic

constituencies were really so, could pay no attention to this fact in the absence of proof that their constituencies were a part of the regular Democratic party of New York, and none could be produced looking toward this. The second was a general summary of the grievances of Mr. Kelley against Mr. Tilden and of Mr. Tilden against Mr. Kelley. This could afford us no ground to say that the Tammany delegates were regular Democratic delegates. The third was more serious. They claimed that there was no representative of the New York Democracy at Cincinnati, for the reason that the State Convention, that which appointed the delegation claiming to be the regular delegation, was called without any authority, and therefore that Tammany had taken no part in that convention. The ground upon which they claimed that the State Committee which called the convention had no authority to call it was that prior to issuing the call it had expelled five of its members and filled their places without any authority for so doing. The regular delegation made the following reply to this claim. They said that when the State Convention assembled last fall to nominate a candidate for Governor of New York, John Kelley and his Tammany delegates came to it claiming to be delegates. Their seats were contested by a competing delegation, and after hearing the contest the convention decided in favor of seating Kelley and his delegates and excluding the others. That they then took part in all the proceedings for organizing the convention, were put on all the committees, and five of them were put upon the State Executive Committee which was to have charge of the party in the future. That when the time came for making nominations for Governor, one side put up Governor Robinson and the Kelley side put up General Slocum. That the calling of the roll was then proceeded with, and had gone so far that but three counties were to vote when, it being obvious

that Robinson would be nominated, Kelley and his associates rose and left the convention, and from that time to this they have maintained their separate organization. That the convention thereupon passed a resolution authorizing the State Committee to declare the seats of any of its members who adhered to the bolters' organization vacant, and that the five Kelleyites on the committee refusing to co-operate with the others, had been declared by them no longer members of the committee, and their places had been filled, and that the committee thus constituted had called the State Convention that appointed the regular delegates. This was the entire case, and as there then could be no doubt that the Tammany delegates had no sort of right to admission, I urged the committee, with all the emphasis that I could command, to exclude them and retain the regulars in their seats, and it was done by a vote of thirty-four States against four. The four dissentients made a minority report recommending the seating of twenty Tammanyites and fifty regulars, but the convention sustained the report of the committee by an overwhelming vote, and thus gave a decisive and most valuable lesson to bolters all over the United States.

I must say that John Kelley made much the most favorable impression on me of any of those who came before our committee. I had the impression that he was a vulgar, prize-fighting Irishman of the Morrissey order. On the contrary, I found him a large-brained, cultivated man, with the manners of a gentleman and a self-possession without ostentation indicative of great reserve force. He made an address to the committee which, though he could make no case for his side, for the reason that no case could be made for it, contained many striking points. He placed himself upon an elevated plane and looked down with undisguised scorn upon the other side. He told one of their speakers, Mr. Fellows (their representative, with

whom he shook hands the next day before the convention) in the most scornful and imperious style that he should require him to confine himself to the truth. In speaking of Mr. Tilden he was especially lofty and scornful, saying something to the effect that if Mr. Tilden would only fight him fairly he would never have caused the breach in the party, "but," said he, "his methods of attack are always by some indirect and covered way," and he could never tell when he was to expect them. Whilst the case was being discussed, Kelley sat in most self-poised and rather dignified style at a window. General Faulkner, chairman of the regular delegation, was speaking, and he said he would ask Kelley whether he would support the nominee of the convention whoever he might be. Kelley made no response, whereupon Faulkner pressed his question, and the committee seeming to expect an answer, Kelley rose and with great power and scorn in his manner said, "If a gentleman should ask me that question I would answer; but to answer you, never." All the other representatives of Tammany said to the committee that they would support the nominee whoever he might be, and afterward Kelley on his own motion said that he would support the nominee whoever he might be, provided it was not Mr. Tilden, but that he would not support him.

I may as well add here all I have to say regarding my newspaper venture. In the early part of the following September, when I had moved to New York to live, the National Democratic Committee met in New York to notify General Hancock of his nomination. It determined to call in a body upon Mr. Tilden, whose nomination I had been most valiantly fighting in my newspaper. My

friends, Senator John W. Daniel of Virginia, and Senator Jonas of Louisiana, insisted that I should go along with the committee to call upon him. Because of the opposition I had made to his nomination I was very reluctant to do this, but I finally yielded to their importunities.

When we got around to his house we found Ex-Governor Stephenson of Kentucky acting as master of ceremonies and introducing each arrival to Mr. Tilden. I declare when I saw him I was never so shocked in my life. He looked like an electrified mummy, but just a little electrified. He was wasted away to a shadow. A great tall silk hat came down almost over his eyes and ears and his lower jaw seemed about to fall and leave his mouth wide open. His face was so emaciated it looked like the face of a corpse two weeks after death. He had his right arm across his breast and it was held up by an attachment of some sort. He shook hands with the tips of the fingers of his left hand, and he seemed hardly able to bring that left hand up to shake with. He was a little dried-up semblance of the man that had once inhabited his clothes. He would shake hands in a listless, lifeless sort of way with each gentleman as he was introduced, much as if he did not know and did not care what was going on. Nevertheless, the old fellow knew exactly what was going on. When it came to my turn Governor

Stephenson said, "Mr. Royall of Virginia, Mr. Tilden." He brisked up at once, and catching hold of my hand he pulled my ear down to his mouth and said, "From what part of Virginia?" I answered, "From Richmond." The old fellow recognized his enemy at once, and dropped my hand as if it had been a red-hot poker, and then he deliberately turned his back on me. Daniel and Jonas were standing by and saw it, and I said to them, "See now what you have got me into. But come on, and let's get even with him by drinking his champagne," which we proceeded to do.

Running a daily newspaper is a very expensive luxury. By the first of August, 1880, I had exhausted all my savings, and my paper not being self-sustaining, I had no alternative—I had to close it. With the record I had made fighting Mahone and his party and with Mahone and his party in full control in Virginia, I knew there was but little opportunity for me in Virginia. So I determined to close my paper and go to New York to practice law. I opened a law office in New York in September, 1880.

I will now return to Mahone and the debt.

Though Mahone had elected a working majority in the Legislature in the fall of 1879, he still had a serious obstacle in the way. A debt payer, Col. F. W. M. Holliday, was Governor and he would remain Governor until January 1, 1882.

He could be relied upon to veto any repudiation legislation that Mahone's Legislature might pass. Accordingly, it passed several such acts and the Governor vetoed each one. Repudiation made little progress, therefore, prior to January 1, 1882. But in the fall of 1881 a new Legislature and a Governor were to be elected, and Mahone's party elected both Governor and Legislature.

Before carrying the narrative further I ought to mention some of the pranks of the Mahone Legislature elected in 1879. I have already referred to the fact that the Mahone program was to fill the judicial offices with men who would kill the coupons without regard to law, order, or reason. This Legislature gave a striking object-lesson in this line of policy.

At that time there was a judge for each county—100 in all. The Readjusters put up a man named Claiborne for judge of Franklin County. This was where Gen. Jubal A. Early had always lived, and he knew Claiborne well. He came to Richmond, and in a written paper he informed the Readjuster caucus that Claiborne was a professional gambler, and not only so, but a cheating professional gambler; that he played the game of poker with a "lizard," which was an instrument with a hand, concealed under the vest, with an attachment that extended down to the toe, and if the player was not satisfied with the cards

dealt him he could exchange it for those held by the "lizard." He said the "lizard" was then at a blacksmith shop for repairs, and he named the shop where the Readjusters could see it. Without making any investigation whatever, the Readjusters made Claiborne judge of Franklin County.

In a short time Claiborne was indicted by his own grand jury for gambling on a race track. The statute under which he was indicted forbade gambling "at an ordinary race track," or other public place. The word "ordinary" has from colonial times been the technical word for "inn" or "tavern" in Virginia. Claiborne got his friend Mays, whom the Readjusters had made judge of the nearby county of Botetourt, to come over and try the case. Mays held that the statute forbade gambling at an "ordinary race track," and that the race track at which Claiborne had gambled was an "extraordinary" one, and therefore not within the statute.

After the election in the fall of 1881 the Mahone party were in complete possession of every department of the State Government, and they proceeded to put their theories into the form of law. They first brought the debt down to little more than half, and they then proceeded to pass acts designed to kill the tax receivable coupons.

Most of the owners of the State's bonds lived in England, and these proceeded to arrange for a

fight in the courts with the State upon the proposition that the coupons contained the State's contract that they should be received in payment of her taxes; that the Constitution of the United States forbade a State to pass any law impairing the obligations of contracts, and that her legislation undertaking to prevent her collectors from receiving the coupons for taxes was unconstitutional and void. The organization of creditors did me the honor of selecting me to conduct the fight for them, and I abandoned all other business to attend to this. I applied to a State court for a writ of mandamus to compel a collector to receive coupons in payment of taxes, nothwithstanding the State's statute forbidding him to receive them, and the State court refused to grant the writ. I appealed the case to the Supreme Court of the United States, which, to the astonishment and dismay of the creditors, sustained the State court. This decision produced a very profound impression upon the white people of Virginia. One of their chief arguments with the Readjusters was that the Supreme Court would break up whatever they did. Mahone and his party had now become avowedly a part of the Republican party and the white people believed that a Republican Supreme Court had made this decision to help along their ally Mahone. Instantly all the white people of the State resolved as one man to abandon the creditor and

force the readjustment of the debt. From that day on I had to fight the entire population of Virginia and when I look back over the contest I am amazed at how I was able to sustain myself for eight years. The court had said in its opinion that the State's contract bound it to receive the coupon "when offered," and that no State legislature could interfere with the obligation of that contract. I insisted at once that had won me the case; that I had lost only on a question of procedure; that the coupon holder was not interested in making the State take the coupon into her treasury; that all he was concerned with was to offer it to the State, and if she chose to lie out of it it was her affair and not his; that all he was concerned with was that she should not molest him in any way after he had tendered the coupons, and if any of her officers did molest him thereafter he could make them pay him damages. I at once announced this as the logical result of the decision, and had my announcement received with derision and ridicule by the great body of the profession. Nevertheless, I stuck to my guns and took other cases to the Supreme Court, and when the decision came in 1884 the Supreme Court held the law to be exactly as I had said it was, in an opinion delivered by Justice Stanley Matthews (Poindexter *v.* Greenhow, 114 U. S. R.).

I now had matters in perfect shape for practical operations except for one thing. The Virginia

courts were filled with men put there to defeat any efforts the coupon holders might make. Although I had the law theoretically what I wanted it, how could I expect any practical relief from a Claiborne or a Mays? I had to get an impartial court or I could never expect anything material.

The United States courts were impartial, and if I could only have my litigation tried there I had a show. But from time immemorial it had been the understanding of every one that the United States courts could try only cases when one party was a citizen of one State and the other party was a citizen of another State, and both parties to my litigation were citizens of Virginia. I took the position that when a question arising under the Constitution of the United States was involved in a case a United States court could try it if both parties were citizens of Virginia. I took a case involving this point to the Supreme Court of the United States and it said I was right. I now had a good cause of action and an impartial court in which to try it. I got people all over the State to stand on their tender of coupons, the collectors levied, I sued the collectors for damages in the United States court, and in every case I recovered damages. Matters were all running my way in a flood tide, and it looked as if I was going to force the State to pay her coupons dollar for dollar.

I will mention one incident that will illustrate

how completely the tide was running my way. In her desperation the State was passing into a statute every scheme any visionary would suggest. So she got to indicting my clients for using coupons. Now men who will charge a battery can be intimidated by a writ. Men will not stand prosecutions. I saw at once the State would beat me if I could not stop these prosecutions, but how to stop them was the question. Suddenly it occurred to me to sue the grand jury in the United States court for damages for indicting my clients under laws that they knew to be repugnant to the Constitution of the United States. The grand jury was composed of merchants, and if there is anything on earth a merchant detests it is to have an announcement made that he has been sued. Accordingly, I sued the grand jury in the United States court for damages, and I made public proclamation that I would sue any other grand jury that indicted my clients. This brought the indictment of my clients to a peremptory ending. At the next term of the Hustings Court of the city of Richmond the grand jury made a written report to the court that they had abundant evidence on which to indict Mr. Royall and his clients, but that he had sued the preceding grand jury and had announced that he would sue any other grand jury that indicted his clients, and that they therefore declined to indict them. This paper can be seen now in the records of the Hustings

Court of Richmond. Thereupon I was indicted for intimidating the grand jury. I was tried, convicted, and sentenced to pay a fine of $150 and be confined in jail for six months, and I was taken to jail. I at once applied to the United States court for a writ of habeas corpus and on the hearing was discharged.

I had the State by the throat, and it was now only a question of months when she would be compelled to submit. But now happened one of the most unexpected things that could possibly happen. The Supreme Court of the United States, seeing the use I was making of the law it had laid down, released the State from my grip.

Somebody, with an ingenuity of the type that is credited to the Devil,—there are a number of claimants for the honor,—got up this scheme: the officers should report the man who tendered coupons for his taxes and the Attorney-General in some cases and the Commonwealth's Attorneys of the counties and cities in the others should sue the person in the State courts for his taxes in the name of the State. The coupons were engraved simply —not signed—and their genuineness could be proved by expert evidence only. But the State provided that expert evidence should not be used on these trials. The coupon holder was sued for his tax therefore in the State Court, the State denied the genuineness of his coupon, and the cou-

pon holder was denied a means of proving his coupon to be genuine. Judgment would, of course, go against the coupon holder with heavy costs. When execution was issued on this judgment, if the coupon holder tendered coupons in payment of the judgment the officer was not to levy on his property and sell it. He was to report the fact to the Commonwealth's Attorney, who was to sue the coupon holder again, get another judgment, and add a second set of heavy costs. And this was to go on until costs were piled mountain high and the coupon holder would be broken by the costs even in depreciated coupons.

When this act was passed I brought a suit in equity before United States Circuit Judge H. L. Bond praying for an injunction to restrain the Attorney-General and the Commonwealth's Attorneys from bringing the suits provided for in it, upon the ground that the law impaired the obligation of the coupon contract and was unconstitutional and void. Judge Bond granted the injunction. Thereupon the Attorney-General of the State and two of the Commonwealth's Attorneys violated the injunction by bringing the suits ordered. I had all three of them up before Judge Bond on a rule to show cause why they should not be punished for contempt of court, and after hearing the case Judge Bond held them guilty of contempt and sent all three of them to the Richmond city jail.

The eleventh amendment to the Constitution of the United States provides that the judicial power of the United States shall not extend to a case in which a State is sued. Way back in the time of the United States Bank the State of Ohio had passed a law imposing taxes upon that bank intended to drive it out of Ohio. The bank sued her officers for an injunction to restrain them from putting this law into effect, and the Circuit Court of the United States enjoined them and put the Treasurer of the State of Ohio in jail for violating the injunction. This fact does not appear in Mr. Wheaton's report of the case (Osborn *v.* The Bank, 9 Wheat.), but the original record shows it. The case was appealed to the Supreme Court of the United States upon the ground that the suit was in substance and effect a suit against the State of Ohio and barred therefore by the eleventh amendment. The opinion of the court was delivered by Chief Justice Marshall and the decision of the lower court was affirmed. The court laid this down as the test in all cases where it was claimed that a State was sued. If the State was named upon the record as a party defendant, then the suit was against the State. But if the State was not named as a party defendant on the record then the suit could never be said to be one against the State. That was understood to be the law from that time forward, and a few years after the war the ques-

tion was again brought up before the Supreme Court in Davis *v.* Gray, 16 Wallace, and the court again declared that the rule laid down by Chief Justice Marshall in Osborn *v.* The Bank was the true rule. Backed by that rule I felt perfectly safe and had not the slightest fear that the State's officers would be able to escape the shackles with which I had bound them.

The Attorney-General and the two Commonwealth's Attorneys applied to the Supreme Court of the United States for a writ of habeas corpus to discharge them from their imprisonment, upon the ground that in putting the State's law, which was conceded on all hands to be repugnant to the Constitution of the United States, into effect they were in substance and fact the State, and that the eleventh amendment forbade the United States Court to enjoin them from putting that law into effect. It was the cases of Osborn *v.* The Bank and Davis *v.* Gray right over again. The officers above were named as defendants and the State was not mentioned, so I had no fear whatever for the result. But to my amazement, when the decision came the court, in an opinion delivered by the same Justice Stanley Matthews who had delivered the opinion of the court holding her bound on her contract, held that the suit was one against the State of Virginia and it discharged the officers from imprisonment (Ex parte Ayres, 123 U. S. R.).

I once heard the following anecdote: A man tracked a grizzly bear over mountain and dale for a long way, and suddenly gave up the pursuit and returned. When he was asked why he had abandoned the chase he said, "The trail was getting too d—d fresh." When it was a mere matter of declaring theoretical law the Supreme Court had no difficulty about giving the coupon holders all of it that they wanted. But when Judge Bond took them at their word and proceeded to put this theoretical law into practical effect that was another story.

I want to make it plain that the decision of the court in this case of Ayres was in direct conflict with what had been held by the Supreme Court from the foundation of the government, in case after case, up to the Ayres decision. Osborn v. The Bank, decided in 1824, was the first case, and I have already stated the main facts in that case. The essential facts are that the old Bank of the United States had a number of officers in the State of Ohio and that the people of that State were determined to drive it out of Ohio if they could. To that end the Legislature of Ohio passed an act imposing a tax of $50,000 on each office that the Bank of the United States had in Ohio, and it directed Osborn, the auditor of the State, to collect it by warrant in the State's name. The law was repugnant to the Constitu-

tion of the United States, as the Supreme Court held, because a State could not tax the Bank of the United States.

Osborn, the auditor, was about to collect this tax when the Bank applied to the United States Circuit Court for an injunction to prevent his so doing, upon the ground that the law imposing the tax and directing the auditor to collect it was repugnant to the Constitution of the United States. The Circuit Court granted the injunction, and Osborn, the auditor, appealed to the Supreme Court of the United States, where it was insisted for Osborn that he was in substance and effect the State of Ohio. The opinion of the Supreme Court was delivered by Chief Justice Marshall, and he held, as above stated, that a suit could never be held to be one against a State unless she was named upon the record, and the decision of the lower court was consequently sustained. In delivering the court's opinion Chief Justice Marshall said (9 Wheat., 857):

> It may, we think, be laid down as a rule which admits of no exception that, in all cases where jurisdiction depends upon the party, it is the party named on the record. Consequently the eleventh amendment, which restrains the jurisdiction granted by the constitution over suits against States, is of necessity limited to those suits in which a State is a party on the record.

After the ending of the civil war the same ques-

tion came before the Supreme Court in the case of Davis *v.* Gray, 16 Wall., 203, and it received the same answer. Texas had made large land grants to a railroad before the war, and after the war the carpetbagger government of Texas attempted to confiscate these lands, and ordered the Governor of the State to make deeds to them. The railroad filed a bill in the United States Court praying that the Governor might be enjoined from executing this unconstitutional law. The Governor set up the same defence, viz: that he was the State of Texas and that the eleventh amendment protected him from suit. The Circuit Court enjoined the Governor, and, on appeal to the Supreme Court, it affirmed the Circuit Court's decree. I quote the following from the opinion of the court (page 220) as follows:

A few remarks will be sufficient to dispose of the jurisdictional objections of the appellant.

In Osborn *v.* The Bank of the United States these things amongst others were decided:

"(1) A Circuit Court of the United States in a proper case in equity may enjoin a State officer from executing a State law in conflict with the constitution or a statute of the United States, when such execution will violate the rights of the complainant;

"(2) Where the State is concerned the State should be made a party if it could be done. That it cannot be done is a sufficient reason for the omission to do it, and the court may proceed to decide against the officers of the State in all respects as if the State was a party to the record;

"(3) In deciding who are parties to the suit the court will not look beyond the record. Making a State officer a party does not make the State a party, although her law may have prompted his action, and the State may stand behind him as the real party in interest. A State can be made a party only by shaping the bill expressly with that view, as when individuals or corporations are intended to be put in that relation to the case."

In the case of Poindexter *v.* Greenhow, 114 U. S. R., 270, Poindexter had tendered the State of Virginia's coupons in payment of her taxes. The treasurer, obeying the State law that required him to refuse the coupons, levied and seized Poindexter's desk in obedience to the State law to sell it and thereby make the taxes. Poindexter brought an action of detinue against the State's treasurer to recover his desk. The treasurer said he was the State and protected from suit by the eleventh amendment. The Supreme Court, following Osborn *v.* The Bank, said that as the State was not named on the record, the suit was not against the State, and it took the desk from the treasurer and restored it to Poindexter.

In the case of Allen *v.* B. & O. R. R. Co., 114 U. S. R., 311, the railroad had tendered the State's coupons in payment of its taxes due to the State of Virginia. The State's officers were about to collect the taxes in money by distress warrants in the name of the State, when the railroad applied to the Circuit Court of the United States to enjoin them.

They also said that they were the State and protected from suit by the eleventh amendment, but the court, following Osborn *v.* The Bank, decided that as the State was not named on the record, she could not be considered a party to the suit. The opinions in both of the last-mentioned cases were delivered by Mr. Justice Stanley Matthews, and in the last one, Allen *v.* B. & O. R. R., he says (p. 314):

"The circumstances of this case bring it, so far as that remedy is in question, fully within the principle firmly established in this court by the decision in Osborn *v.* The Bank of the United States, 9 Wheat., 739."

It may be possible to distinguish Ex parte Ayres from these cases, but to do it one must have the acuteness of the man in Hudibras.

> "He could distinguish and divide
> A hair 'twixt south and southwest side."

Nothing less will do the job. In Ex parte Ayres Mr. Justice Stanley Matthews attempted to draw a distinction between them, but to my mind he made a most lamentable failure. He attempted to found the distinction upon two grounds. The first is that when the officer sued has no personal interest in the suit, but the State is the only party having a direct interest, she is to be considered the real party sued, although she is not named on the record. But all that had been considered by Chief

Justice Marshall in Osborn *v.* The Bank, and by the Supreme Court in all of the cases following the Osborn case, and, as stated by Justice Matthews himself, in Allen *v.* B. & O. R. R., the principle had become firmly established in the Supreme Court that the State was never to be considered a party to the cause unless she was named as a party on the record.

In what respect did Osborn have more interest in the cause than Ayres. Neither had any interest in it. In each case the officer was simply executing an order that his State had given him by a law that was repugnant to the Constitution of the United States.

In what respect was the State of Virginia more interested in having Ayres bring the suit she had ordered him to bring than Ohio had in having Osborn bring the suit she had ordered him to bring? I can see no difference in interest, and the same may be said of each of the other cases mentioned. In none of them did the officers have any personal interest. In all of them the State was the only party having a direct interest. Yet in all of them the court had adhered to the rule laid down in Osborn *v.* The Bank that the State was never to be considered a party unless she was named as such in the record. Justice Matthews's second ground for distinguishing Ex parte Ayres from Osborn *v.* The Bank and the other cases mentioned

was that in Ex parte Ayres the coupon holder was seeking to force the State to comply with her contract and to redeem the coupon. How he could bring his mind to this conclusion is simply inconceivable to me. The case was simply this: The State ordered her Attorney-General, by an act of her Legislature repugnant to the Constitution of the United States, to sue a taxpayer who had tendered her coupons in payment of his tax, and who stood upon that tender, refusing to pay anything else. The coupon holder asked the United States Court to forbid the Attorney-General to bring that suit on the ground that the act requiring him to bring it was unconstitutional. He did not ask the court to go further and make the State accept the coupon in payment of the tax. He stopped with asking the court to keep the State's officer off of him. How can that act be construed into an attempt to make the State pay the coupon? It is solely a self-defensive measure. It asks nothing from the State. It asks simply and solely that he be protected in that isolation to which he is entitled and that this officer be kept from molesting him in a matter as to which he is entitled to quiet and rest. How that can be said to be an attempt to force the State to pay her coupon is more than I can understand. The tax payer's position was that he had done his whole duty and was entitled to repose. It was nothing to him whether the

State got her taxes or whether she did not. But she had no right to molest him. The gist of Justice Matthews's opinion on this point is contained in the following extract (page 502). He says:

A bill in equity for the specific performance of the contract against the State by name, it is admitted could not be brought. * * * The converse of that proposition must be equally true because it is contained in it; that is, a bill, the object of which is by injunction, indirectly to compel the specific performance of the contract by forbidding those acts and doings which constitute breaches of the contract, must also necessarily be a suit against the State. In such a case, though the State be not nominally a party on the record, if the defendants are its officers and agents through whom alone it can act in doing and refusing to do the things which constitute a breach of its contract, the suit is still, in substance, though not in form, a suit against the State.

When exactly those considerations were urged upon Chief Justice Marshall in Osborn *v.* The Bank, he came to exactly the opposite conclusion. I quote from his opinion (page 846) as follows:

The bill is brought, it is said, for the purpose of protecting the bank in the exercise of a franchise granted by a law of the United States, which franchise the State of Ohio asserts a right to invade and is about to invade. It prays the aid of the court to restrain the officers of the State from executing the law. It is, then, a controversy between the bank and the State of Ohio. The interest of the State is direct and immediate, not consequential. The process of the court, though not directed against the State

by name, acts directly upon it, by restraining its officers. The process therefore is substantially, though not in form, against the State, and the court ought not to proceed without making the State a party. If this cannot be done, the court cannot take jurisdiction.

The full pressure of this argument is felt, and the difficulties it presents are acknowledged. The direct interest of the State in the suit, as brought, is admitted; and had it been in the power of the bank to make it a party, perhaps no decree ought to have been pronounced in the cause, until the State was before the court. But this is not in the power of the bank. The eleventh amendment of the Constitution has exempted a State from the suits of citizens of other States or aliens; and the very difficult question is to be decided, whether in such a case the court may act upon the agents employed by the State.

He then proceeded to announce the opinion of the court that it might act upon them notwithstanding that the State was the real party to be affected, and all the other cases cited above did the same thing.

What now is to be said of Justice Matthews's opinion that forbidding the officers of the State to do things that would be breaches of the State's contract is compelling the State to perform her contract? It is absolutely impossible to reconcile this with sound reason. When Justice Matthews forbade the State's auditor in Allen *v.* B. & O. R. R. to seize the railroad property for the taxes the railroad owed and had tendered coupons for, he was forbidding him to violate the

State's contract, but he was not requiring the State to perform her contract. He was leaving the parties just where he found them. He was requiring the State to do nothing. He was leaving it optional with her whether she would perform the contract embodied in the coupon or whether she would not. To say that that required her to perform that contract is, it seems to me, to confound the most obvious distinction between things, and is equivalent to saying that twice two is five instead of four. To forbid Allen to seize the railroad property after the tender of coupons was not to require the State to perform her contract to receive the coupons in payment of taxes, and, when that statement is made, all has been said that the case admits of being said.

Justice Matthews's proposition ignores and disregards the consideration upon which the eleventh amendment rests. That amendment is founded upon the proposition that it is beneath the dignity of a sovereign State of this Union to be sued in a United States Court. That proposition may be one of little importance, but when the eleventh amendment was adopted the State thought it of sufficient importance to require that it be made a part of the Constitution of the United States. Now when Justice Matthews says that forbidding an officer to trespass upon me after I have tendered coupons is the same thing as suing the State and

forcing her to give me a receipt for my taxes and to receive my coupons into her treasury, he is absolutely ignoring the State's cherished exemption from suit. He is saying that it is a mere trifle and amounts to nothing and is not to be considered as an element in the case. But the States consider it a very great element in the case, and they will never admit that forbidding an officer to collect taxes by an unlawful proceeding is the same thing as suing them on their contracts and forcing them to perform those contracts.

These considerations are so obvious that, for my part, I have always believed that the Supreme Court was Homerized in making the decision it made in Ex parte Ayres.

All through its history the Supreme Court had been in the habit of declaring the law and seeing all the people of the United States at once adopt its declaration and base all further action upon it. It had never conceived it to be possible that anybody would refuse to acquiesce in its decision when once made. But the Supreme Court had never before tackled the people of Virginia. They are the most obstinate, bull-headed people that ever lived when they think any one is seeking to invade their rights. You may sometimes wheedle and cajole them, but you are always going to have a lively time when you attempt to drive them. It is like the question as to the best

way to lead a calf. If you put a rope around his neck and try to lead him he pulls back and drags you about in all sorts of ways. But if you tie the rope around his hind leg and get behind him, you can lead him along in a very satisfactory manner. No doubt the Supreme Court was perfectly amazed when it found out the controversy it had got on its hands in this coupon matter, with its dockets filled up each term with the coupon cases I carried there. In one of these cases Mr. Justice Bradley, in delivering the opinion of the Court, said (135 U. S. R., 721):

> If the influx of coupons should be so uncertain that no safe calculation could be made on the subject, an arrangement could probably be made with the coupon holders for limiting the proportion of tax which would be received in coupons. It is certainly to be wished that some arrangement may be adopted which will be satisfactory to all the parties concerned, and relieve the courts as well as the Commonwealth of Virginia, whose name and history recall so many interesting associations, from all further exhibitions of a controversy that has become a vexation and a regret.

Throughout the whole of the controversy the *Richmond Dispatch,* the leading daily newspaper in the State of Virginia, was incessant in its attacks upon the Supreme Court and the subordinate Federal courts for their course in the matter. It claimed that they were making decisions against the State in direct violation of the eleventh amend-

ment; that they were a usurping judiciary, and that the country should wake up and drive them out of office before they deprived the people of all of their liberties. There is no doubt that a considerable part of the nation was giving attention to this clamor of the *Richmond Dispatch,* and that newspapers in many parts of the country were taking up and re-echoing its clamor. There is no body of men on the face of the earth that keeps its ear closer to the ground than the Supreme Court of the United States, and it is always glad to hear that the people approve of its actions and decisions.

When Judge Bond put Attorney-General Ayres in jail the *Dispatch* went into conniption fits. "What! put the attorney-general of a sovereign State in jail! These usurping Federal judges should be impeached and discharged in disgrace from their offices." This was the staple of its clamor.

Thinking that the court would be aroused to resentment, I sent a copy of each of these papers with the articles marked to each of the judges every day. But the anticipated effect does not seem to have been produced.

At any rate the court commenced to trim Ex parte Ayres down almost from the day it was decided, until on March 23, 1908, it decided Ex parte Young, which in effect cuts away the last vestige of Ex parte Ayres. The United States Circuit

Court of Minnesota put the Attorney-General of Minnesota in jail for bringing a suit against a railroad that a statute of Minnesota commanded him to bring for the purpose of putting that State's confiscating rate law in effect, and on his applying to the Supreme Court to discharge him, on the authority of Ex parte Ayres, the Supreme Court did not do a thing but tell him he might stay in jail. And if Ex parte Young left anything of Ex parte Ayres the recent Virginia rate case ends that.

However, the decision killed my case as dead as Julius Caesar, and I told my clients they must settle at once. The State did not realize how badly I was hurt, and she had been so badly clubbed that she was in a very good humor for a settlement. A new settlement was made, which gave my clients a great increase upon what the State had been offering them and this enormous controversy came to an end.

I am very proud of the result. Unaided and alone, after a contest of eight years, I had driven the State of Virginia from her chosen position, a thing that it took the Federal Government four years to do, and it had to use a million of armed men, and at the cost of oceans of blood and four thousand millions of dollars.

The court ought never to have departed in the smallest degree from the rule laid down by Chief Justice Marshall in Osborn *v.* The Bank. That

wonderful man had looked over the whole field, and with that remarkable prevision that nature had endowed him with he had no doubt seen that the greatest danger that threatened our institutions was the peril of the State governments falling under the control of men unwilling to be bound by those eternal principles of fairness and justice that rule in every government that hopes to endure, and he had foreseen that it was necessary to give such a construction to the Constitution of the United States as would prevent the States baffling justice by screening themselves behind their exemption from suit as sovereigns when arraigned before the national tribunals of justice upon the charge that they were seeking to evade the obligations of the national Constitution. For that reason, no doubt, he brought the court to adopt the principle announced in Osborn *v.* The Bank. The history of the past quarter of a century proves how far-seeing and how wise the great Chief Justice was. The attempts of the States to confiscate the property of the railroads by cutting their rates down and by other devices of robbery show how necessary it is that the rule of Osborn *v.* The Bank should be adhered to, and the Supreme Court, seeing the dreadful blunder it made in the Ayres case, has come back now in fact, if not in name, to the principle announced by Marshall. The rule thought out and announced by the great Chief Justice in

Osborn v. The Bank is the most important announcement ever made by him. With it in force, the States can never evade their obligations under the Constitution. With it abrogated they may go on evading one obligation after another until they finally undermine and destroy the Constitution and the Union. The recent confiscatory rate legislation fully illustrates the case.

The following is not very relevant, perhaps, but I wish to relate it here, anyhow. It is well known that Mr. Justice Horace Gray, of the Supreme Court of the United States, was chief justice of Massachusetts when he was appointed to the Supreme Court of the United States. At the John Marshall centennial he came to Richmond, Virginia, and delivered an address on Judge Marshall. Conversing with a friend of mine, he said, "You know Judge Story was put into the Supreme Court to curb Judge Marshall in his centralizing tendencies. But he had not been there long before the great Chief Justice laid his mighty hand upon his head and made him his own." My friend said, "Judge, that is a good thing to put in your address. Do it." "Oh, no," responded Judge Gray, "there are too many Storys living in Boston for me to put that in my address."

Judge Bond told me a funny thing in connection with the Ayres case. He said that one day Chamberlain, the restaurateur in Washington, came

over to Baltimore and asked him to come over to Washington and dine with Henry Watterson, editor of the *Louisville Courier-Journal.* Bond accepted, though he did not know Watterson. When he got there he found Watterson pretty hilarious. Watterson put his arm around Bond's shoulder and said, "Bond, I was always with you in that Virginia fight, but did you not know that Uncle Stanley would go back on you?" He alluded to Justice Stanley Matthews, and Bond said he found out that Matthews had some sort of connection by marriage with Watterson that caused him to call Matthews "Uncle Stanley." Matthews had delivered the first opinion of the Supreme Court which hurled defiance and death at the State of Virginia, and he delivered this last one undoing all of Bond's work and letting the State completely out of the difficulty.

Bond said he replied to Watterson, "No, how could I know he would go back on me?"

"Because he has gone back on everybody he ever had anything to do with. Did he not do so and so, and so and so. Did he not preside over the convention that nominated Greeley, and then vote for Grant?"

Another incident pertaining to this case is worth recording I think. The State of Virginia paid Hon. Roscoe Conkling, of New York, $10,000 to argue it for her in the Supreme Court of the United

States. Conkling was very reserved and haughty, and paid no more attention to me than if I had been a poodle dog. The argument he made before the court was on the level of a schoolboy's, and after he had been speaking about half an hour without saying a word that was material, and without mentioning the eleventh amendment, which was the whole case, he said, "I believe that is about all that is to be said," and he was about to take his seat. But the Hon. John Randolph Tucker, who was the State's other representative, pulled Conkling's coat-tail and said in a stage whisper, "But you have said nothing about the eleventh amendment. Discuss that"; and he said, "Oh, yes. And I forgot to mention that we rely upon the eleventh amendment as a bar to the suit," and he sat down. When I came to reply I did a thing that the great man's worshippers considered sacrilege. I said no one had undertaken to defend the constitutionality of the Virginia act of assembly ordering the suits to be brought against those who had tendered coupons. "Of course," I said, "I do not take the humorous argument that has been delivered here this morning seriously." Conkling had argued that the act was constitutional and thereupon I chuckled to myself, "I have got even with him, for his insolence, anyhow."

Though not particularly relevant to anything

I have been talking about, I want to record here the following: I lived in New York City, practising law there from 1880 to 1884, and I had a very considerable practice there. I am still a member of the New York bar and am still practising my profession there. I have been frequently asked what I think of the New York bar, and my answer is always that its most noticeable feature, with the exception of a few individuals, is the fact that the New York lawyer thinks all the law is in New York. He thinks that the Legislature at Albany passes all the statutory law that is made, and that the Court of Appeals at Albany makes all the judge-made law that is made.

I once met with a curious illustration of this. They had three huge volumes published in 1875 by Banks Brothers, called The Revised Statutes of New York, which were in every lawyer's office and were treated and considered as the authentic version of their laws. I have no doubt they were perfectly correct so far as New York law is concerned, at any rate, I never heard of their accuracy in that respect being questioned. But they undertook to print the Constitution of the United States at the beginning of the first volume, and gave the thirteenth amendment to the Constitution in the following language:

ARTICLE XIII.

SECTION 1. Slavery being incompatible with a free government, is forever prohibited in the United States; and involuntary servitude shall be permitted only as a punishment for crime.

Now the thirteenth amendment really reads as follows:

Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

A trifle of this sort is a matter of no moment to a New York lawyer, since it concerned the laws of barbarians and not those of the city of Rome.

As I have been reviewing the transactions of the Supreme Court of the United States so much at large, I think the following, for the truth of which I can vouch, though I am not at liberty to state my authority, should be recorded here. The case of Ex parte McArdle, from Mississippi, 7 Wallace, 506, an appeal in a habeas corpus case, brought before the Supreme Court in 1868 the constitutionality of the reconstruction acts of Congress, those Pandora boxes from which such untold wretchedness and misery to the people of the Southern States issued. The case was argued and submitted, and the court decided by a vote of five justices to four

that the laws were repugnant to the Constitution of the United States. Amongst the justices voting to declare the laws unconstitutional was Mr. Justice David Davis, of Illinois. Mr. Justice Field was appointed to write the opinion of the court. He wrote it and brought it before the Saturday conference, and read it, where it was approved of by five justices. It was to have been delivered and handed down on the next Monday. Meanwhile, information had got out that the court was going to destroy all of these odious laws on the coming Monday, and the radical partisans in Congress had introduced a bill to take from the Supreme Court jurisdiction to hear appeals in habeas corpus cases. A motion was made by one of the four justices, after the opinion had been read, to postpone the delivery of the opinion from the following Monday to the next Monday afterward, and upon that motion Mr. Justice Davis quitted his four associates and voted with his four adversaries, making five justices for the postponement, and that was accordingly ordered. In the meantime, the radicals rushed their bill through Congress, and when the Supreme Court met on the Monday to which delivery of the opinion was postponed it found its authority to decide the case taken away from it. By this sort of juggling the Southern States were forced to undergo the awful tortures of reconstruction to which the solid South is by far more due

than to the war. That noble old Roman, Mr. Justice Grier, filed this solemn protest against the proceeding:

In re McArdle, Protest of Mr. Justice Grier.

This case was fully argued in the beginning of this month. It is a case that involves the liberty and rights not only of the appellant, but of millions of our fellow-citizens. The country and the parties had a right to expect that it would receive the immediate and solemn attention of this court. By the postponement of the case we shall subject ourselves, whether justly or unjustly, to the imputation that we have evaded the performance of a duty imposed upon us by the Constitution and waited for legislation to interpose to supercede our action and relieve us from our responsibility. I am not willing to be a partaker either of the eulogy or opprobrium that may follow and can only say: *Pudet haec opprobria nobis, et dici potuisse et non potuisse repelli.*

R. C. Grier.

I am of the same opinion with my brother Grier and unite in his protest.

Field, J.

As I have said, I am not at liberty to say how I know these facts, but I know them absolutely to be facts, and there are a number of other men now living who also know them to be facts.

In the summer of 1888 my relations with my English clients required me to go to London, and I took my wife with me. She was then a very beautiful young woman of about twenty-eight or

twenty-nine. When crossing the ocean her steamer rug disappeared and she could not find it high or low. She reported the fact to me, and said, "I must have it produced." I said, "My dear, give the thing up. If I start after it I am going to run it down to the bottom, and that may raise a devil of a racket on this boat. Let the thing drop, and when we get to London I will buy you another one worth two of that." But, womanlike, she was not going to lose a steamer robe if she could help it, and so she demanded that I should go to the captain about it. "Very well," said I, "you see now what is going to happen." I started out to find the captain, and was shown him up on the bridge of the ship in the act of taking observations of the sun with a glass. I went up the stairway to him, and said, "Captain, some one has stolen my wife's steamer robe, and I come to you to have it looked up." He turned on me in utter amazement that I should have had the audacity to interrupt him in the important function that he was engaged in, and said, "What do you mean by coming up here and interrupting me when I am taking observations?" I said, "I mean just what I have said. I want you to have my wife's steamer robe hunted up." "Go down from here," he said. "I'll have your wife's robe looked up." "All right," said I, "that is all I want."

In a short time the robe was produced.

"Come," said I to two friends, "let's go to the ward room and take a drink on that. That's the way to hold the arbitrary tyrants up." We went to the ward room, and all three of us ordered our drinks. I noticed that the bar-keeper put the drinks of my friends before them, but put nothing before me. "Why, what's the matter?" I said. "Where is my drink?" "The captain has given orders," he replied, "that you are not to be served anything more on this ship." "The devil he has!" said I. "He thinks I was drunk when I called on him to produce my wife's robe. I was no more drunk than he was. But we will see about this."

When we went out of the ward room I asked one of my friends to go back and buy me a quart bottle of whiskey, which he did, and I took it to my stateroom and had a drink whenever I wanted it.

On the ship there was a man who forced himself on my acquaintance, giving the name of Thompson, and saying that Mr. Cleveland had made him our consul at Liverpool, where he had served all through his first administration. I had no means of finding out on the ship whether this was true or not, but the man said he had seen me often in New York at the New York Hotel, where I stayed while residing in New York. I did not remember him at all, but he knew all about me. He introduced me to a friend of his, a Russian count named Ga-

bousky, or something of that sort. In some way the two got acquainted with my wife, and they were most persistent in their attentions to us all the rest of the way. I had it in mind to try and organize a company while in London to develop the iron ores of Virginia, which are very valuable, and I mentioned that fact to Thompson or the Count. Next morning, after arriving at London, the Count appeared at the Langham Hotel, where I was staying, with a fat Irish friend, who insisted that I should come to his apartments in Piccadilly that night, when he would have Lord Idisleigh to meet me and his lordship would get me up the ore company in a jiffy. I was a little suspicious, but I went. I found the Irishman and a friend of his playing a simple game of cards with a shilling for the stake. They wanted me to take a hand while we were waiting for his lordship, which I did. Soon a Mr. Harrison arrived with his lordship's regrets that he was unable to come that night. Harrison at once took a hand in the game, and commenced raising the stake, and continued until he had made the bet a pound. Before you could say Jack Robinson I had lost $30. I saw I had been buncoed, and I put my hand down and said they must excuse me, that I was going to leave. They raised a great outcry, but I got up and put my chair, a stout oaken one, in front of me and commenced backing to the door. They looked as though they

were going to spring on me. I am a pretty stout man and can hold my own fairly well in a personal encounter. They looked me over and saw that somebody was going to get his neck broken if they advanced on me and so they refrained. I backed to the door, turned, and I scampered to the street about as fast as any man ever did.

Upon the steamer we made the acquaintance of a gentleman named Schoen, from Pittsburg, who was going abroad with his two young daughters. Through us, our friends the Count and Thompson got acquainted with the Schoens. After staying in London a week or two myself and wife went over to Paris. Shopping there one day we ran upon the Schoens. Schoen asked me to leave the ladies shopping and go with him to a restaurant; that he had something to consult me about. He then told me that he had met with the Count in Paris, who had made himself very charming to them, and in the end had taken him to a musical festival of some kind, where the Count met with a very agreeable acquaintance of his to whom he introduced Schoen. That in the course of the evening Schoen had been in some way induced to take from his inside vest pocket his pocket-book in which he had $1,500; that when he returned to his hotel he looked into his pocket-book and found there was nothing there but a piece of a *New York Herald*. He wanted me to advise with him

whether he should have the Count arrested. He said he had caused a detective to search his room and found nothing there but a pair of old soiled socks. I told him not to think of arresting him; that the authorities would keep him there to testify against the Count and no one could tell when he would get away. He took my advice and pocketed his loss.

CHAPTER IV

THE TRUSTS

The beginning of public alarm in the matter of trusts was about 1890, though as late as 1897 I had not come to share in that alarm. I thought the judicial power if properly applied by persons having a correct idea of the common law principles applicable to the case was entirely adequate to keeping the trusts within their proper sphere, in which they would be a source of public benefit rather than harm. I am of that opinion still in spite of all that the trusts have been permitted to do that has so aroused public resentment. In the winter and spring of 1897 I prepared a pamphlet upon this subject in which I set out my views of it. Just as I was about to send it to the press the decision of the Supreme Court of the United States in the case of United States *v.* Trans-Missouri Association, 166 U. S. R., 290, was announced. This was the case in which the court announced that it must enforce the Sherman anti-trust act just as it was written and break up "every" agreement that put any restraint upon interstate commerce. I had never heard that any such case was pending before the Supreme Court, and the decision when

announced was a great surprise to me. I at once saw that it totally ignored, if it did not run directly counter to, the views I had elaborated with so much pains and labor in my pamphlet. I went to Washington and read all the briefs of counsel that had been used in the case, and I saw there was no suggestion of the views I entertained in any of them. That was in the spring of 1897. Another case was to be argued in the Supreme Court in the following fall, which is now United States *v.* Joint Traffic Association, 171 U. S. R., 505, which involved precisely the same questions as had been raised in United States *v.* Trans-Missouri Association just decided. So I determined to publish my pamphlet just as I had prepared it, in the hope that its presentation of the case might have some influence in the decision of the case to be argued in the coming fall. I accordingly published it in April, 1897, and immediately sent a copy of it to each judge of the Supreme Court, and I also at once sent a copy of it to each of the counsel who were to argue the case coming on in the fall, amongst whom was Mr. E. J. Phelps, Minister to England, who had argued the case of United States *v.* Trans-Missouri Association just then decided, as before stated.

At that time, what I am going hereafter to treat as the harmful trusts, that is, the enormously rich corporations that crush out all opposition to them-

selves, had done very little to alarm the public and to arouse the resentment against them that is so prevalent now. Accordingly, my pamphlet was principally devoted to a discussion of agreements between a number of persons, their nature, and their proper limitations.

The theory I put forward, briefly stated, was this, in substance: If an act was good and legitimate when done by one person that act could not become bad and unlawful merely because it was done by a number of persons instead of one person. That was the generally accepted theory at that time, but it cannot be denied that the tendency of the decisions of the courts since has been the other way. See Pickett *v.* Walsh, 78 No. E. Rep., 753, a decision of the Supreme Court of Massachusetts as late as October, 1906. I still think, however, that when the subject is properly treated it will be held that the performance of the act by numbers instead of by one is innocent if there be no evil intent and the object be in good faith to promote the interests of those participating in it. That an act must be judged by the nature of the act and not by the number of persons concurring and acting together in performing it; that as one person could lawfully and properly compete in business with another person even to the point of wholly destroying the latter by fair competition, several persons acting together could properly do the same

thing, and, when co-operating thus, they could wholly destroy their rival in the business provided they did it by fair competition, however exacting the competition might become; that though one or many co-operating together might compete with his or their rival in business even to his or their rival's destruction, so long as what they were engaged in was really fair competition, yet our laws forbade one or many from attempting the destruction of a person, even though a rival in business, from ill will or malice toward that person. I illustrated the distinction by quoting a decision of the Court of King's Bench delivered by Lord Chief Justice Holt two hundred years ago to the following effect:

The plaintiff complained of the destruction of his "decoy" by the defendant having discharged guns so near to it as to drive away the ducks that defendant shot for a living. It appeared that the defendant had no occasion to shoot guns near the plaintiff, but did it simply and alone out of malice toward the plaintiff, and to do him a wanton injury. The court held that the defendant had done the plaintiff an actionable wrong by that conduct for which he was liable to the plaintiff in damages. It is obvious, according to this decision, that purpose and intention in performing the act become decisive in such a case.

I also illustrated the proposition by stating the

case of Mogul Steamship Company *v.* McGregor, a decision of the House of Lords of England (App. Cas., 1891, p. 25) as follows:

Several lines of steamships traded to China all the year round. The trade was unprofitable except in what is called the "tea season," when it was very profitable. The losses of the year were made up and a profit gained by the freights on tea in "tea season." Another line of steamers traded to Australia all the year until "tea season" came on, when its steamers were diverted to Hankow to get a part of the profitable tea trade. The lines which traded to China all the year round entered, therefore, into an agreement called a conference, by which they agreed to divide out freights amongst themselves, and they published a notice to all merchants in China that if they would ship everything all the year round by one of the conference lines, they would be allowed a rebate upon all freights at the end of the year of five per cent.; and whenever one of the steamers of the Australian line came to Hankow the conference had a steamer there to underbid it on freights; so that whatever the Australian got caused it a loss. Thereupon the Australian line applied to the English courts for protection, upon the ground that this combination of many against one was contrary to the principles of our laws. The decision of the highest court in England, the House of Lords, was that the agree-

ment was a perfectly good and valid one, upon the ground that no malicious and wanton attack was being made upon the Australian but that the conference was simply seeking to advance its own interests by fair and open competition.

I quoted from the judges as follows. Lord Justice Field said:

My Lords, I think that this appeal may be decided upon the principles laid down by Holt, C. J., as far back as the case of Keble *v.* Hickeringill, 11 Mod. 74, and note to Canington *v.* Taylor, 11 East, 514. In that case the plaintiff complained of the destruction of his "decoy" by the defendant having discharged guns near to it and so driven away the wild fowl, with the intention and effect of the consequent injury to his trade. Upon the trial a verdict passed for the plaintiff, but in arrest of judgment it was alleged that the declaration did not disclose any cause of action. Holt, C. J., however, held that the action, although new in instance, was not new in reason or principle, and well lay, for he said that the use of a "decoy" was a lawful trade, and that he who hinders another in his trade or livelihood is liable to an action if the injury is caused by a violent or malicious act. "Suppose, for instance," he said, "the defendant had shot in his own ground, if he had occasion to shoot, it would have been one thing, but to shoot on purpose to damage the plaintiff is another thing and a wrong. But," he added, "if the defendant, using the same employment as the plaintiff," had set up another decoy so near as to spoil the plaintiff's custom, no action would lie, because the defendant had "as much liberty to make use of a decoy" as the plaintiff. In support of this view he referred to earlier authorities. In one of them it had been held that by the setting up of a

new school to the damage of an ancient one by alluring the scholars, no action would lie, although it would have been otherwise if the scholars had been driven away by violence or threats.

It follows, therefore, from this authority and is undoubted law, not only that it is not every act causing damage to another in his trade, nor even every intentional act of such damage which is actionable, but also that acts done by a trader in the lawful way of his business, although by the necessary results of effective competition interfering injuriously with the trade of another, are not the subject of any action.

Of course it is otherwise as pointed out by Lord Holt, if the acts complained of, although done in the way and under the guise of competition or other lawful right are in themselves violent or purely malicious, or have for their ultimate object injury to another from ill will to him and not the pursuit of lawful rights.

The House of Lords held the conference to be a lawful one. As appears from the quotation from Lord Justice Field's opinion, purpose and intention were the pivotal facts in the case.

I further quoted from several other of the judges to the same purport and effect as Lord Justice Field's opinion and I said that there was the test in all cases. If the combination imposed no more than a reasonable restraint upon trade and aimed in good faith at bettering the condition of the parties to it, it was a good and lawful combination, however many might be the parties to it. But if the combination put an unreasonable restraint upon

trade or aimed at doing some person a wilful and malicious injury it was a bad combination and condemned by our laws. The first was competition though it destroyed the rival. The second was not competition, but wanton injury to another. All men then, I said, had a right to make any combination or agreement which put no unreasonable restraint upon trade, and was not intended to inflict a wanton injury upon another, if the agreement aimed in good faith at bettering the condition of the parties to it. But no man had a right to form a combination which put an unreasonable restraint upon trade or that aimed at inflicting a wanton or malicious injury upon another. Freedom to make such lawful contracts was, then, I said, of the very essence of citizenship and that "liberty" which is guaranteed to the citizen against State action by the fourteenth amendment, which forbids a State to deprive any person of life, liberty, or property without due process of law; and against Congressional action by the fifth amendment to the Constitution of the United States, which forbids Congress to deprive persons of life, liberty, or property without due process of law. This, I said, was the test that should be applied in the argument that was to come on in the fall in the case of United States *v.* Joint Traffic Association. If the agreement between the railroads that was attacked

in that case was no more than a reasonable restraint upon trade and was one in which the railroads aimed in good faith at bettering their own condition and had no purpose to do a wanton injury to another, the agreement was one in harmony with the spirit and essence of our laws, and protected from hostile Congressional action by the fifth amendment—as one of the "liberties" guaranteed to the citizen by the Constitution, and if the act really intended to forbid "every" contract that restrained trade it was void, as under the modern law reasonable contracts in restraint of trade may be made, and the right to make them is one of the "liberties" guaranteed to the citizen by the Constitution of the United States. The trusts, I insisted, were to be viewed and treated from this standpoint. Allgeyer *v.* Louisiana, 165 U. S. R., 578; Lochner *v.* New York, 198 U. S. R., 45.

Without making any sort of acknowledgment to me, Mr. E. J. Phelps took my ideas from my pamphlet and incorporated them, without my knowledge, in the brief that he presented to the Supreme Court in the case of United States *v.* Joint Traffic Association already spoken of. Mr. Phelps is now dead and cannot speak for himself, and this is such a serious charge that I feel compelled to quote from his brief in support of the charge. He says at pp. 38, 39: "A just freedom

of contract in lawful business is one of the most important rights reserved to the citizen under the general term of 'liberty,' for all human industry depends upon such freedom for its fair reward." We had heard nothing of that in the preceding case of United States *v.* Trans-Missouri Association, although Mr. Phelps was one of the counsel who argued it and filed a brief in it, and that was one of the principal points that I had written my pamphlet to establish. On page 18 he said:

> In the anti-trust act the plain object is to reach and put down mischievous trusts in restraint of trade and monopolies.

We had heard nothing of that in the previous argument and that was the principal thing that I had written my pamphlet to prove. On page 43 he says:

> The question in the present case is whether the agreement here under consideration is one that may be prohibited by legislation, without infringing the freedom of contract and the right of property which the Constitution declares and protects.

On page 57 he says:

> The considerations that are thus seen to attend and control the discussion of the subject conduct by inevitable logic to this conclusion: *The true test of the constitutionality of a law which abridges the freedom of contract must necessarily be found in the reasonableness*

and justice of the contract abridged. The power of the legislature to prevent unjust and mischievous contracts where the public welfare requires it, must be admitted. The constitutional prohibition against the deprivation of liberty and property does not prohibit such a law, because the freedom to make contracts of that character is not a part of the liberty of the citizen, nor is it a right of property. But when the contract which a statute undertakes to forbid is not unjust or unreasonable, and is one that the general principles of law and morality sanction, and much more when it is seen to be necessary to the lawful enjoyment of lawful property, then the constitutional prohibition designated as a protection against precisely such legislation, is directly encountered.* * * This, then, must be the criterion: *Is the contract sought to be prohibited one that by the general principles of law and justice it is the right of the party to make*; or is it unjust, unreasonable and mischievous and therefore unlawful?

The italics are Mr. Phelps's.

Almost all of Mr. Phelps's brief is devoted to establishing these propositions, although there was no suggestion of them in his argument of the preceding case, and these are the identical propositions that my pamphlet was written to establish. Mr. Phelps says of these propositions at p. 58:

This point was not made on the argument of the Trans-Missouri case because no such construction of the act was anticipated by counsel, nor was it considered by the court, since it is an unvarying rule that no objection to the constitutionality of a law will be considered unless raised by the party affected.

I think it would have been far more candid in Mr. Phelps if he had said the points were not made on the preceding argument because he had never then seen Mr. Royall's pamphlet, and as to what he says of the court not considering the constitutionality of a law unless raised by counsel, I never heard of that rule before. On the contrary, it is the doctrine of the court that the unconstitutionality of a law is a jurisdictional question (Ex parte Yarborough, 110 U. S. R., 651), and a further doctrine is that the court will always raise a jurisdictional question itself. (M. C. & L. Ry. *v.* Swan, 111 U. S. R., 379.)

When the court came to decide the case it gave this stinging rebuke to Mr. Phelps:

> Regarding the two agreements as alike in their main and material features, we are brought to an examination of the question of the constitutionality of the act, construed as it has been in the Trans-Missouri case. It is worthy of remark that this question was never raised or hinted at upon the argument of that case, although, if the respondent's present contention be sound it would have furnished a conclusive objection to the enforcement of the act as construed. The fact that not one of the many astute and able counsel for the transportation companies in that case raised an objection of so conclusive a character, if well founded, is strong evidence that the reasons showing the invalidity of the act as construed do not lie upon the surface and were not then apparent to those counsel.

It looks as if the court had read the pamphlet and saw through the whole transaction.

If Mr. Phelps, instead of pirating my pamphlet, had conferred with me about the best way of putting my views before the court, he might have won his case, for the court, when it came to decide the case, yielded in great part to the argument of the pamphlet, but it was held that the power of Congress to regulate commerce among the States overrode even the guaranteed "liberty" of the citizen to make innocent contracts. That, however, if properly treated could have been got out of the way. The decision is of vast importance in this controversy as illustrating the unbounded power of Congress in the matter of regulating interstate commerce. But the point I made as the means of regulating the trusts has never yet been passed on by the Supreme Court and it still remains to be adjudicated, and I have an abiding confidence that in view of the absolute necessity for an abridgment of the Sherman law, as I am going to show farther on, that if a case were got properly before the Supreme Court without Mr. Phelps's botches of the argument, a modification of previous doctrines that would give relief would be secured.

It must not be supposed that I have digressed into this Phelps incident to glorify myself and endeavor to show that I first thought this matter out and placed it upon its true foundation. That was

far from my purpose. I have gone into it in order that I may bring out plainly and distinctly propositions for which I shall contend when I come to discuss the subject more in detail.

Notwithstanding the fact that the trusts have so outrageously abused their rights and privileges since my pamphlet was published, I adhere to all that was said in it, and I still submit that the leading ideas of that pamphlet contain the true lines of the trusts' rights and the true suggestions of how they should be controlled so as to render them harmless to the people, while preserving to them all of their just rights.

There is one incidental matter, however, that should be understood here. *Purpose* and *intention* are made by my pamphlet the criterion of whether an act is good or bad, and the decision of the House of Lords in the Mogul Steamship case was accepted by the world as an endorsement of that proposition. But in a few years after the Mogul Steamship case was decided the House of Lords decided the case of Allen *v.* Flood (App. Cas., 1898, p. 74), which seemed to overrule the Mogul case, and it threw the whole subject again into confusion. The decision in this case was that purpose and intention were of no consequence in determining whether an act was good or bad. This decision produced consternation amongst those who had to deal with this subject, and it gave rise

to the sharpest and most hostile criticism. The profession seems to regard it as overturned by the subsequent case of Quinn *v.* Letham (App. Cas., 1901, p. 534), which is regarded as re-establishing the doctrine of the Mogul Steamship case, and the still subsequent case of Giblin *v.* The National Union (1903, 2 K. B., 600) seems to regard the doctrine of the Mogul case as the law.

But the American courts seem unanimously disposed to repudiate Allen *v.* Flood and to follow the Mogul case. Allen *v.* Flood was distinctly repudiated by the Supreme Court of Illinois in Doremus *v.* Henessey (43 L. R. A., 797), by the Supreme Court of Wisconsin in State *v.* Durner (62 L. R. A., 744), by the Supreme Court of Massachusetts in Plant *v.* Woods (51 L. R. A., 339. See Gray *v.* Building Council, 63 L. R. A., 758), by the Supreme Court of Georgia in Employing Club *v.* De Brosser Co. (69 L. R. A., 95), and the doctrine that a malicious or evil intent will make an act unlawful when it might otherwise be lawful is sanctioned by many of the State courts and by the Supreme Court of the United States in Angle *v.* St. P. R. R., 151 U. S. R., 1.

So that I think I can fairly say that it is the common law of this country that if an act is clothed with a good intent it may be a lawful act, and yet if it be done with an evil or malicious intent it may become an unlawful act; and this is a

point to be borne carefully in mind while considering what follows.

I come now to deal with the case of enormously rich and powerful corporations which crush out all opposition to themselves by the use of their brute power. These are the trusts which have so maddened the people, and these are the trusts that it should be the earnest purpose of all of our authorities to control and force to operate within their legitimate lines.

The thing that the public has a right to complain of in the action of these rich corporations is their giving their goods away or selling them below cost, which is *pro tanto* the same thing, for the purpose of destroying a weak rival and driving him out of business. No doubt every citizen can point, in his own experience, to cases of this kind that have come under his personal observation. I have seen many cases of it. Two or three years back a corporation was organized where, in part, I live, to sell and carry petroleum oil around in the cities of Manchester and Richmond to customers. As soon as the company had established itself and was really beginning to do business it, of course, attracted the attention of a great oil company. This put it under a regular and thorough system of espionage. It had detectives to follow the first named company's wagons and find out just where it sold oil. Then it sent its own wagons around

to those parties and offered them oil always far below the other's prices, and it kept this up until the first-named company saw it would certainly be destroyed, when it sold out to the other oil company at what it could get. Where I live is one of a great tobacco company's favored regions. I have seen processes like that above described put into operation in this territory by that company until it made the blood of every self-respecting citizen boil with indignation.

I have known attempts to be made to defend this course of action in these rich corporations. Their advocates have said, May a man not give away what is his own? Shall there not be bargain counters where the merchant may sell his old stock at what he can get? May a man not give his goods away to advertise his business? Undoubtedly all of these things may be done when the act is performed for the purpose named. But this is the point where the purpose and intent so strongly dwelt on heretofore come into play. When a man gives his goods away because he is a charitable man, or has a bargain counter to sell off his old stock, or sells his goods below cost to advertise them, that is one thing. When he gives his goods away or sells them below cost for the purpose of destroying his rival and driving him out of business, that is a very different thing. They are different by reason of the purpose and intent. The

first act is perfectly legitimate and proper, the second is illegitimate, unfair, unreasonable, and opposed to the elementary principles of our laws which command that while you live you shall let live.

A combination of persons or a very rich corporation while confining itself to fair and legitimate competition, has a right to make all the money it can make, and the more it makes the better it is for society. Our rich men are our strength. They furnish the capital for the new and great enterprises that help every one and make the country strong and great. It is for the interest of the public to see men grow as rich, in a fair way, as it is possible for them to become. But giving goods away for the purpose of destroying a rival is not fair competition. It is not competition at all. It is the exercise of brute force for an unworthy object. There is no such thing as "competition" unless both competitors sell their goods for more than they cost. It is not a matter of much moment how much is added to the cost. One may be satisfied with a small profit and another may want a larger one. But the goods must be sold at something more than the cost or the transaction is not business and competition, unless in the excepted cases of selling off old stock or in good faith advertising the business.

At a meeting of the American Bar Association

at Hot Springs, Virginia, in 1903, I presented a paper in which I pointed out these considerations (see Report of American Bar Association for 1903, p. 27), and I urged the Association to take the matter up and throw the powerful weight of its endorsement in favor of united action to force a discontinuance of this practice. If the Association had taken the subject up I have no doubt the country would have got relief before this time. But the Association seemed indifferent to the matter and nothing came of it. Perhaps it contained too many "trust" lawyers. This, however, is the objective point. This is the citadel to be assailed. The evil that has grown up in the country is the practice of the rich and powerful corporations in giving their goods away to destroy a weak rival, and that is the practice to be broken up. When we find a way to put an effectual ending to that practice we shall cure the trust evil. Until we do that the country will suffer from the trust evil while it grows worse and worse, if it does not, in the end, swamp our civilization. To cure the evil we must look at it from the standpoint of the common law, that is from the standpoint of the nature of things.

In the preceding discussion I have treated the common law view of the subject and shown that the common law will not tolerate a man doing an act injurious to another when he is merely and simply animated by a malicious purpose to injure

that other. The word "malice" is a word of very broad signification in the law. An act to be malicious need not be inspired by personal ill will or hatred. It is enough, in the eyes of the law, to make it malicious if it is one taken in wanton or reckless disregard of another man's rights. The legal definition of malice made by Mr. Justice Bayley in Bromage *v.* Prosser (4 B. & C., 255) is universally accepted as the correct definition of it. "Malice," said he, "in common acceptance means ill will against a person, but in its legal sense it means a wrongful act done intentionally, without just cause or excuse." Every such act as that is in the eye of the law malicious.

Now, for the great trusts to sell their goods in the way of business at a very small profit is competition with a rival. But for them to give their goods away, or sell them below cost or at such a trifling advance over cost as to be in effect selling them at cost for the purpose and with the intent of destroying that rival and driving him out of business is not competition, but the doing of a "wrongful act intentionally without just cause or excuse" and therefore malicious in the eye of the law, for the act cannot benefit them and can only harm the rival.

It is answered to this that they look for a benefit when they shall have driven the rival out of business. But the benefit is not the direct result of the

act, but only the indirect and remote result of it. The direct result is the destruction of the rival, and any benefit that may come to them will be the result of other acts done after the rival is destroyed. It is in effect the principle discussed by the Supreme Court of the United States in the E. C. Knight case and the Hopkins case, where the court points out that the restraint upon commerce in those cases is not the direct effect, but only the indirect effect of the agreements, and therefore the agreements were not within the meaning of the act of Congress that denounces "agreements in restraint of trade."

The act is therefore wrongful, because though an act they would have a right to perform if done with a worthy intent, it is an act injurious to another and done with the purpose and intention of injuring that other and of no sort of benefit to the actor. It measures up exactly to Lord Holt's duck case, which contains the whole law of competition. Nothing has been added to the discussion since Lord Holt decided that case, and the doctrine he announced has stood like a granite wall ever since he announced it. And that doctrine is that an act may be good and lawful when done with an honest intent and may yet be bad and unlawful when done with a dishonest intent which is malice in the eye of the law. The Supreme Court of Massachusetts has very recently come very near

to endorsing this idea, if it has not actually done so, in the case of Pickett *v.* Walsh, 78 No. E. Rep., p. 753, decided in October, 1906.

It will now be seen why I dwelt with so much emphasis upon the importance of purpose and intention. It is the crux of the case. When the trust gives its goods away as an honest gift, made in good faith, as a gift, it is within its plain right. When it sells them below cost in good faith to advertise its goods it is within its plain rights. But when it gives them away or sells them below cost with the purpose and intention of destroying its weak rival and driving him out of business it is not within its rights, it is trespassing upon its rival's rights, and it is doing that rival a common law injury and a wrong, which the courts ought to take cognizance of. My pamphlet of 1897 put the case correctly then in saying parties had a right to do anything intended in good faith to be for their own benefit, but that they had no right to do any act inspired by malice toward another person; and that word "malice" covers the whole ground when it is understood in its legal and not its popular sense. It means that no man has a right to do an act not intended to advance his own interests, but simply to cause a wanton injury to another. That in the eye of the law is a malicious injury to that other.

But whether I am right about this or not, there can be no question about its being a proper subject

for legislation. If it is not a wrong at common law it is certainly a matter that the legislative power can make a wrong and provide redress for. To provide effectual legislative redress there must be legislation by both Congress and the States. The States are powerless to deal with interstate commerce and Congress is powerless to deal with intrastate commerce. The case requires, therefore, State legislation to bring to an end the wrongful conduct of the trust that is wholly within the boundaries of a State. It also requires Congressional legislation to bring to an end the wrongful conduct of the trust that lives on interstate commerce. I have drawn an act for the States to pass and another for Congress to pass. If all the States will enact and enforce the act suggested for them and Congress will enact and enforce the act suggested for it, I believe the trust will soon be curbed and compelled to confine its operations to legitimate boundaries, when, instead of being a curse, it will become a public blessing.

I therefore suggest to the States and to Congress the following acts:

Act suggested to the States.

SECTION 1. Be it enacted that it shall be unlawful for any person, partnership or corporation to give away in this State, any goods, wares, or merchandise manufactured, created, or grown in this State and not intended for commerce with foreign nations or for commerce

among the several States or with the Indian tribes, or to be used in the same, or to sell the same in this State, at or below cost or so near to cost as to be in effect a sale at or below cost, for the purpose and with the intention of destroying a rival in business doing business in this State, or of driving him out of the business he is engaged in in this State.

SECTION 2. The courts of equity in this State are hereby given power and authority to enjoin any of the acts made unlawful by Section 1 of this act and to grant any other proper relief under same, and to that end they are authorized to require any person, firm, or corporation sued in them under this act to produce their books and papers and to answer all lawful questions.

SECTION 3. A person injured by any act made unlawful by Section 1 of this act may sue the party injuring him for damages, and the court shall give him judgment for three times the amount of what the jury places his damages at, and also for a reasonable attorney's fee.

SECTION 4. It is hereby made the duty of the attorneys for the commonwealth to put this act into force and effect, and they are hereby required to bring any suit under this act for any party complaining to them which his or its case may justify.

SECTION 5. Any person, partnership or corporation violating the provisions of Section 1 of this act shall be deemed guilty of a misdemeanor. Any person or member of a partnership found guilty of such misdemeanor shall be punished by fine and imprisonment or fine or imprisonment at the discretion of the court. Any corporation found guilty of such misdemeanor shall be fined at the discretion of the court. Any officer, agent, or director of a corporation knowing that said corporation is violating Section 1 of this act and aiding therein shall, on conviction,

be fined and imprisoned or fined or imprisoned at the discretion of the court.

Act Suggested to Congress.

SECTION 1. Be it enacted that it shall be unlawful for any person, partnership or corporation to give away any goods, wares, or merchandise intended for or used in commerce with foreign nations or intended for use in commerce among the several States or with the Indian tribes, or to sell the same at or below cost or so near to cost as to be in effect a sale at or below cost for the purpose and with the intention of destroying a rival in business or driving him out of business.

SECTION 2. The circuit courts of the United States are hereby given power and authority to enjoin any of the acts made unlawful by Section 1 of this act and to grant any other proper relief under same, and to that end they are authorized to require any person or corporation sued under this act to produce their books and papers and to answer all lawful questions.

SECTION 3. A person injured by any act made unlawful by Section 1 of this act may sue the party injuring him for damages in the circuit court of the United States for the proper district, and the court shall give him judgment for three times the amount of what the jury places his damages at, and also for a reasonable attorney's fee.

SECTION 4. It is hereby made the duty of the United States district attorneys to put this act into force and effect, and they are hereby required to bring any suit under this act for any party complaining to them which his or its case may justify.

SECTION 5. Any person, partnership or corporation violating the provisions of Section 1 of this act shall be deemed guilty of a misdemeanor. Any person or member of a partnership found guilty of such misdemeanor shall

be punished by fine and imprisonment or fine or imprisonment at the discretion of the court. Any corporation found guilty of such misdemeanor shall be fined at the discretion of the court. Any officer, agent, or director of a corporation knowing that said corporation is violating Section 1 of this act and aiding therein shall be deemed guilty of a misdemeanor and shall, on conviction, be fined and imprisoned or fined or imprisoned at the discretion of the court.

SECTION 6. No person shall be exempted from the obligation to testify concerning violations of the provisions of this act upon the ground that his testimony might tend to incriminate him. But no person shall be prosecuted for any violation of this act who has been required to testify concerning violations of it.

SECTION 7. This act shall be in force from its passage.

It will be argued that it will be very difficult, if not impossible, to probe into the business affairs of a trust so as to find out its violations of these acts. But little is worth accomplishing if there is no difficulty in accomplishing it. If it is impossible, however, a different case is presented. It is not impossible. With astute counsel provided by the Government to investigate a case, aided by stenographers and skilled accountants provided by the Government, and a sufficient fund provided by the Government to enable the lawyer to command every agency that is necessary, it will be impossible for the trust so to conceal its piracies as to avoid detection. But suppose it is able to conceal some

of them. Yet many would be unearthed, and if these were punished to the limit of the law, the trusts would become so terrorized that they would nearly, if not entirely, go out of the game. It is possible there may be no need for State legislation. Everything touches interstate commerce in one way or another.

THE HARRIMAN CONTROL

There is one other branch of this subject which should, perhaps, receive some treatment here. According to the newspaper reports of the investigation made by the Interstate Commerce Commission Mr. E. H. Harriman is engaged in a process for controlling a great portion, if not all, of the railroads that may well arouse the astonishment if not alarm of the people of this country. According to those reports he secured a majority of the stock of the Union Pacific Railway and, placing bonds upon the company's property, he bought with the proceeds of those bonds a majority of the stock of the Southern Pacific Railway, and thus controlling this corporation he placed bonds upon its property, and with the proceeds of these bonds he bought a majority of the stock of the Oregon Short Line and the Oregon Railway and Navigation Company, and, repeating the process with one road after another, he acquired control of these roads and seven others, until he had absolute do-

minion over 25,000 miles of railroad, besides the Pacific Mail Steamship Company, the Portland and Asiatic Steamship Company, and the steamship line from New York to New Orleans, formerly known as the Morgan Line. Of course if Mr. Harriman can lawfully do this he may continue the operation until he dominates the entire transportation of the United States and its transportation to foreign countries also. Do our institutions permit one man to acquire such a domination as this over the entire commerce of the country and to hold it against any legislative or judicial attack upon it? If they do there is some strange shortcoming in our institutions. I, for one, believe that such an anomalous situation as this can be lawfully controlled and that Mr. Harriman can be lawfully forced to release his grip upon the country's commerce.

Upon Mr. Harriman's side it will be said the law permitted him to buy a majority of the shares of the Union Pacific Railway's stock, which gave him a lawful right to place bonds upon its property for any purpose sanctioned by its charter, and one of those purposes was acquiring a majority of the stock of the Southern Pacific Railway, and so on, as he acquired control of each subsequent company; that he has simply acquired property by the exercise of a legal right and that it would be spoliation pure and simple to take

from him new property that he acquired lawfully. That argument is not to be treated lightly.

In dealing with this subject it is well that we should have before our minds the exact facts of the Northern Securities Company, the way in which the judges of the Supreme Court of the United States stood in that case, and what they said about it.

The case was this. A corporation was formed under the laws of New Jersey, called the Northern Securities Company, without capital (that is, $30,000 was paid into its treasury to meet expenses of organization), but capable of issuing stock to almost any extent that might be required. The stockholders of the Great Northern Railway Company and the stockholders of the Northern Pacific Railway Company, two immense railway corporations that were in active competition with each other in interstate commerce, exchanged their stock in these two corporations for shares of stock issued by the Northern Securities Company, and thus this company came to own both of the railways and the old competition between them was brought to an end. The United States attacked this organization under the Anti-trust Act as a combination and agreement in restraint of interstate trade, through ending the former competition between the two railways. Mr. Justice Harlan delivered the opinion of four justices, holding that the transaction

was a combination in restraint of interstate trade and unlawful and void, and Mr. Justice Brewer delivered his own opinion in which he concurred in the same result. Mr. Justice White delivered a dissenting opinion concurred in by Chief Justice Fuller and Justices Peckham and Holmes, and Mr. Justice Holmes delivered his own dissenting opinion concurred in by the Chief Justice and Justices White and Peckham.

The court is thus seen to have been very much split up in the reasons given, but the important fact is that a majority of the judges concurred in holding that the transaction was a combination in restraint of trade under the Anti-trust Act. Mr. Justice Brewer in his concurring opinion seems to have anticipated the possibility of just such a thing happening as has happened in the Harriman case, and while prepared to condemn it at once if it happened through the instrumentality of anything like the holding company, the Northern Securities Company, he seems to be a little tender-footed if it happened through an individual acquiring a majority of the stock of the several corporations through ordinary purchase and sale, as Mr. Harriman has acquired it. Mr. Justice Harlan uses language frequently in the course of his opinion which would seem to indicate that he and the three Justices for whom he spoke were prepared to condemn such a transaction even though accomplished

as Mr. Harriman accomplished it, if its effect was to put restraints upon interstate commerce. He may not, however, have had such a transaction before his mind, but his language looks very much as if he did have that identical transaction in view. I will quote some of it. At page 354, 193 U. S. R., he says, speaking of the holding company:

> However that company may have acquired for itself any stock in the Great Northern and Northern Pacific Railway Companies, no matter how it obtained the means to do so, all the stock it held or acquired in the constituent companies was acquired and held to be used in suppressing competition between those companies. It came into existence only for that purpose.

The learned judge certainly indicates here that he considers the purpose for which the transaction was got up of the utmost importance, and it cannot be doubted that Mr. Harriman has gone into his transaction with the purpose and intention of suppressing competition between railways engaged in interstate commerce which have heretofore been in most active competition for that commerce.

On page 350 he says:

> Whilst every instrumentality of domestic commerce is subject to State control, every instrumentality of interstate commerce may be reached and controlled by national authority, so far as to compel it to respect the rules for such commerce lawfully established by Congress. No corporate person can excuse a departure from or violation

of that rule under the plea that that which it has done or omitted to do is permitted and not forbidden by the State under whose authority it came into existence. We repeat that no State can endow any of its corporations or any combination of its citizens with authority to restrain interstate or international commerce or to disobey the national will as manifested in legal enactments of Congress.

On page 347 he says:

It would seem that the government which represents all cases, when acting within the limits of its powers, compels obedience to its authority. It would mean that no device in evasion of its provisions, however skilfully such device may have been contrived, and no combination by whomsoever formed, is beyond the reach of the supreme law of the land if such device or combination, by its operation directly restrains commerce among the States or with foreign nations in violation of the act of Congress * * *

In short, the court may make any order necessary to bring about the dissolution or suppression of an illegal combination that restrains interstate commerce (p. 346).

There is much more in the opinion to the same effect, and it was all said after the judge had shown (p. 334) that he had the case of a person buying the controlling interest in the stock of a railroad corporation or in several railroad corporations distinctly before his mind as one of the cases in which a device might be got up to effect a restraint upon interstate commerce.

In summing up what the decision of the Supreme Court has established in respect to this matter, Mr. Justice Harlan says (p. 332), That to vitiate a combination such as the act of Congress condemns, it need not be shown that the combination, in fact, results or will result in a total suppression of trade or in a complete monopoly, but it is only essential to show that, by its necessary operation, it *tends* to restrain interstate or international trade or commerce or *tends* to create a monopoly in such trade or commerce and to deprive the public of the advantages that flow from free competition.

We have it laid down for the law, then, that no device which may be resorted to will close the eyes of the court, and prevent its ascertaining just what is the true purpose and effect of any transaction whatever that touches interstate commerce, and that if it finds that in "its necessary operations it *tends* to restrain interstate or international trade or commerce, or *tends* to create a monopoly in such trade or commerce," it is condemned by the law. I do not see how Mr. Harriman's transactions can stand a moment when subjected to this test.

And as to the plea that this view would be depriving Mr. Harriman of the full use and enjoyment of his property, the court would probably make the same answer that it made in the Joint Traffic Association case to the argument that all

men have a "liberty" to make any harmless contract which is protected by the Constitution, "that is true, but they hold that right subject to the superior and supreme right of Congress to regulate commerce between the States and with foreign nations."

There is still another maxim of the law, the application of which to questions of this sort has never yet been probed, and that is *Salus populi, suprema lex*—the safety of the people is the supreme law. That maxim finds expression in the preamble to the Constitution of the United States, which reads as follows:

> We the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

"Promote the general welfare!" The Supreme Court never yet has told us what limitations circumscribe those words. I have no doubt whatever, in my own mind, that as the safety of the people requires those words to be expanded, they will grow larger and larger until they take in every case where the safety of the people is put in jeopardy, and Mr. Harriman's device has put the safety of the people in peril.

But after all, if Congress will pass the act for

controlling the trusts that I have drawn and will amend the Sherman law as I suggest farther on, the whole subject will be properly regulated and we shall have no more trouble of any consequence.

In conclusion I desire to say that in my judgment it is a great pity President Roosevelt devoted so much of his energies to getting Congress to pass the rate bill. The people were not complaining of rates, for they were not so high as to cause discontent. But the people were complaining bitterly of rebates granted by the railroads and of unjust discriminations made by the railroads, and of the oppressions and injustices of the trusts.

If the President had devoted his great talents and energies to getting Congress to give the people relief in these matters he would have performed one of the greatest public services ever performed by a ruler.

It is not possible for the Interstate Commerce Commission to regulate interstate rates. There is competition between all interstate lines, and competitors and competition alone can regulate those rates. These interstate rates depend upon so many thousands of different considerations that skilled men such as the railroads have are the only men on earth who can regulate them. A commission is as incapable of dealing with them properly as it is of regulating the tides. The interstate rates,

therefore, should have been left to competition, and Congress has no power to deal with the intrastate rates. They must be dealt with by the State commissioners. Every word, therefore, of the Hepburn bill that deals with the regulation of interstate rates is vicious in its tendencies; but every word in it that seeks to destroy rebates and discriminations is vital and valuable.

SHERMAN ANTI-TRUST LAW

This act in its present state is the most vicious piece of legislation that ever came from a lawmaker's hand. It deals with the most intricate and important relations of life and required for its draftsman one familiar with Mr. Darwin's "Orgin of Species" and the principles of evolution. But I doubt if its author, whoever he may be, ever had the slightest familiarity with either. The act condemns "every" restraint upon trade, and the Supreme Court says it is powerless to modify that language and that the inferior courts must carry the act out literally.

But if the draftsman of the act had had any sort of appreciation of the subject he would have known that there can be no trade at all unless restrictions are put upon some sort of trade somewhere. I go into partnership with Jones to export tobacco from Richmond, Virginia. Jones is much addicted to dealing in stocks and I make him agree

that he will cease dealing in stocks and give his undivided attention to our business. We have put a restriction upon trading in stocks but we have greatly aided the export tobacco trade. And so it is. There is no co-operative business that does not put some sort of restraint upon some sort of trade somewhere.

In the case of the United States against the American Tobacco Company, decided by the United States Circuit Court in New York City in November, 1908, Lacombe, J., says of this act:

> Every aggregation of individuals or corporations, formerly independent, immediately upon its franchise terminates an existing competition: whether or not some other competition may subsequently arise. The act as above construed prohibits "every" contract or combination in restraint of competition. Size is not made the test. Two individuals who have been driving rival express wagons between villages in two contiguous States who enter into a combination to join forces and operate a single line restrain an existing competition, and it would seem to make little difference whether they make such combination more effective by forming a partnership or not.

The American Tobacco Company is made up of a great many subsidiary companies that it has acquired and incorporated with itself through which it does an immense business, employing many thousands of agents. All of these subsidiary companies did business in competition with each other

before they were acquired by the American Tobacco Company. When the decree came to be framed it enjoined each of these subsidiary companies from doing any more business until it was shown to the court that the competition that formerly existed between them had been restored. This wiped out hundreds of millions of dollars of property and ended one of the greatest businesses of the country by the stroke of a pen. If this is to be the law of the land, then all co-operative business is ended.

When, therefore, the draftsman of the Sherman law forbade "every" restraint upon trade he ought to have known that he was killing trade and arraying the laws of Congress against the laws of nature.

What then should have been the principle governing the draftsman of that act? He should first of all have been a student of Darwin and have understood the principles of evolution. He should have understood the preceding principles governing purpose and intention and he should have understood that the principles of evolution do not condemn the destruction of a person by fair competition, but that they inexorably justify it. He should have known that all they condemn is wanton destruction from a bad motive. He should have known that the destruction which fair competition brings about is that inexorable destruc-

tion which we mean when we speak of the survival of the fittest, the foundation upon which all nature rests. He should have known that as this is the foundation on which evolution rests it is the natural right of the citizen to make any agreement whatever with another citizen to do anything that will advance his interests, that is not intended to do a wanton injury to another, even if it destroys that other through fair competition, and that that natural right is therefore one of the "liberties" that the Constitution intends to secure to the citizen. He should have known therefore that when he forbade "all restraints" upon trade that he was laying the axe at the root of trade, that he was depriving the citizens of their natural "liberties" that are necessary for progressive civilization, and that he was arraying an act of Congress against the laws of nature.

What then should have been the first sentence of his law? It should have forbidden all agreements to impose unreasonable restraints upon trade and all agreements that sought to do a wanton injury to another and have stopped there, whereby the people would have been left free to impose those restraints upon trade that the experience of men have shown to be necessary to trade, and they would have been left free to make all those combinations necessary to co-operative business; but would have been forbidden to put

in operation those vicious aims that are not intended for their own benefit, but only for the wanton destruction of their fellow-citizens. Those practices are what the great trusts live on. They cannot beat the small dealer if they are prevented from killing him by wanton injuries to him. They have to earn dividends upon a great mass of water while he has to earn on solid gold dollars alone. If they are left to fair competition the independent will beat the trust all the time. The law should be amended now, in accordance with these views, providing, however, that railroads and other public service corporations should not be allowed to enter into agreements that put restraints upon trade without the consent of the Interstate Commerce Commission. A wide line of demarcation should be drawn between corporations engaged in private business and railroads and other public service corporations. The corporations engaged in private business should be dealt with from the standpoint discussed. The railroad and other public service corporations should be held under the restraining hand of government.

It ought to be plain now where the financial panic of 1907 came from. The President put the Sherman trust law into effect according to its terms, as he should have done. The holders of stock in industrial corporations that were doing perfectly legitimate business said to themselves, if he is go-

ing to enforce that law according to its terms he will destroy my corporation along with the others. I am going to sell out while I can. This brought all the stock into the market at once. But the same influence that made the owner want to sell operated on the mind of the buyer to keep him from buying, consequently, all were sellers and there were no buyers, and the market sagged on down lower and lower until the condition of panic arose, and if the law remains as it is and in enforced literally as it should be, there will be many more panics in the future.

Finally, it is my deliberate belief that if this subject is ever brought properly before the Supreme Court there will be such a modification of what has been done as will give the country relief. If it is not, then Congress must so modify the Sherman law as to make it tolerable. It is intolerable now.

CHAPTER V

FREE SILVER AND POLITICS

Toward the end of the State debt fight, Page McCarty (the same man who fought the duel) started a debt-paying daily paper in Richmond called *The Times*. A gentleman of large means in Richmond, named Joseph Bryan, got so far drawn into this enterprise that it resulted in his coming to own the paper. In 1890 he offered me the place of editorial writer for *The Times*. Whilst I was conducting the State debt fight it had been one of the terms of my contract with my clients that I should devote myself exclusively to their business, so that when the contest ended I was entirely without a clientelle. I accepted Mr. Bryan's offer and became sole editorial writer for *The Times*.

The "free silver" issue was just then developing, so that I had a noble theme to devote myself to, and I went into that contest, against free silver, with all my heart and soul. It was my business to watch all the currents of opinion, and I looked over many newspapers each day to see how they were setting. When Mr. Cleveland sent his Venezuela message to Congress I was satisfied free

silver was practically dead. The country was recovering from the disastrous panic of 1893 and the clamor of the pessimist was no longer attended to. But this red rag shaken in Great Britain's face changed everything. The business interests of the whole country were then thrown into the most violent panic. All the ground that had been recovered was lost and pessimism became the condition everywhere. William J. Bryan arose out of the conditions brought about by Mr. Cleveland's Venezuela message. From the day that message went into Congress free silver began to take on a new life until it grew to the proportions that we saw in 1896.

What could have induced Mr. Cleveland to do anything so foolish? It was done just as he came back from one of his duck-hunts.

In one of the debates which followed Senator Ben Hill's assault in the Senate on Mahone's democracy Senator Don Cameron of Pennsylvania, who was a great friend and advocate of Mahone, came rushing from the restaurant and pitched headlong into the discussion in an utterly irrelevant and wholly disconnected way. A reporter of the New York *World,* in giving an account of it, said, "Something he had *eaten* had turned his face very red." I have always thought that something Mr. Cleveland had eaten on that duck-hunt had upset his usually sound judgment. But whether this be

true or not, Mr. Cleveland turned the trick. He created the free silver of 1896.

I will digress a little at this point to tell some incidents connected with Mr. Cleveland. All the world knows his passion for fishing. A gentleman named Harrison has a fine trout stream near Leesburg, Virginia. Some time after he had completed his great fight against free silver, in which every Senator and Representative from Virginia had opposed him, Mr. Cleveland paid Mr. Harrison a visit to fish his trout stream. In the middle of the day, when they suspended fishing for a julep and luncheon, Mr. Cleveland said, "Harrison, these Virginians are an open, frank, outspoken people that I like. But, in the name of common sense, where do they get their public men from?"

As every one knows, the Honorable Grover could be a gentleman of very bad manners when he set his mind that way. In 1886 or 1887 I had a most excellent opportunity for finding that out. Some well-meaning, but ill-advised parties who thought they might intervene and procure an adjustment between the State and her creditors got up a scheme for having Mr. Cleveland, Mr. Bayard, and one or two others thrust themselves in between the two and try to bring about a settlement. Mr. Cleveland was immensely popular in Virginia at that time, and I thought if the movement was ju-

diciously guided something might be made to come of it, but, directed by the parties who had charge of it I saw nothing but disaster to all concerned. I determined, therefore, to go to New York and see Mr. Cleveland and try to get him to act according to my advice. He was then a member of a law firm of which Hon. Wayne McVeagh, of Pennsylvania, whom I knew very well, was also a member. I went to the office and asked him to introduce me to Mr. Cleveland and say a few words in behalf of my project to him. McVeagh said, "No, go and introduce yourself and your scheme to him; you will find him most approachable, and he does not like introductions." I went to his office, but Mr. Cleveland was not there, and I left my card saying I would return later.

In an hour I returned and was shown into his office. He was seated at his desk with my card before him, resting against the ink-stand, and his head resting upon his arms which were folded on the desk. After introducing myself and being received with a grunt that offended me at the outset, I told him why I had called. He growled out a few words with a manner that indicated he felt no interest in me or my mission, and would be glad if I would go out as soon as possible. I fired up at this and said to him something to the effect that I should not allow his bad manners to deter me from explaining the duty I had come there to per-

form. I said, "Mr. Cleveland, unless you give proper attention to this very important matter, your great name will become involved in what will become a scandal." He grunted out something about being able to take care of his good name, by which time I was in a rage. Turning on him I said something to the effect that he and his name might go to the bad place as far as I was concerned, and I stalked out of his office. I spoke of the interview freely and the Southern residents of New York took it up and discussed it freely. In consequence a reporter of the Baltimore *Sun* called on Mr. Cleveland and asked him about it. The *Sun* stated that he said he did not take in the situation or appreciate my relation to the subject. To a friend of mine he said that I was under the influence of liquor, which was not a fact, and I was surprised that any one so conversant with such matters as Mr. Cleveland was should have fallen into that error.

It must not be supposed that I am inimical to Mr. Cleveland. Upon the contrary, he did this country, in my opinion, two of the greatest pieces of service ever rendered it, when he whipped free silver and suppressed the Chicago riots,—and the country should be forever grateful to him for those two services.*

*This was written during Mr. Cleveland's life, but I let it stand.

I return now to free silver.

I fought free silver in *The Times* with all the energies of my nature, and we had a following in the State which was far greater than any one would suppose who judged by the election returns of November, 1896, between Bryan and McKinley. To make this understood I must go back a little. When Mahone got complete possession of the State he set up one of the most infamous governments that any people ever had to live under. Judges Claiborne and Mays, as before related in this work, will serve to indicate the character of the government that Mahone imposed upon the people of Virginia. All regard for decency and morality was discarded, and the government of the State became little more than an organization for plunder.

In the fall of 1883 a new Legislature was elected and the white people of the State, roused to such a fury as the people of Virginia have never been roused to, determined to elect a majority of the Legislature at all cost. I have never seen a people so united and so resolved as the white people of Virginia were at that election. Just before the day of election the intense strain gave way in Danville and there was a riot between the whites and the blacks. It has never been known how many negroes were killed in this riot, but it was a fearful experience. I was living in New York when the day of election came on, but I had

retained my citizenship in Virginia and I came to Richmond to vote. Business was suspended for the day, and there was something in the air that made every one feel that we were in the presence of some overpowering and tremendous event. About the middle of the day I was sitting in the Richmond Club with some thirty-five or forty young men and we were discussing the progress of events. Presently I said, "Gentlemen, I don't care who knows it, I am armed," and I pulled out a large Colt's revolver. There was a sort of smile went around, and first one, then another, pulled out a pistol, and soon it appeared that every man in the room was armed. I tremble still to think what would have been the consequence if a riot had been started that day in Richmond, for the whole population was armed and ready for a riot.

The white people carried the election and came into control of both bodies of the Legislature. They thereupon determined that they would never run the risk of falling under negro domination again, and they accordingly amended the election laws so that the officers of election, if so inclined, could stuff the ballot boxes and cause them to make any returns that were desired. Under these statutes the elections in Virginia became a farce. We got rid of negro government, but we got in place of it a government resting upon fraud and chicanery, and it very soon became a serious question which

was worse, a negro government or a white government resting upon stuffed ballot boxes.

This condition of affairs had become so generally known that Mr. Hanna, chairman of the Republican National Committee, had determined to make no fight in Virginia in the election of 1896, but to let the State go for Bryan by default. Early in September two leading Republicans in Virginia, Edmund Waddill, who was appointed by Mr. McKinley United States Judge for the Eastern District of Virginia, and Col. Jos. P. Brady, who was appointed by Mr. McKinley Collector of Revenue for the Eastern District of Virginia, came to me and asked me to go with them to New York to see Mr. Hanna and ask him to send the necessary funds into Virginia to make a contest there in the coming election. *The Times'* fight for the gold standard had produced an impression, and we had a considerable following ready to split with the so-called Democratic party on the question of free silver.

I went with these gentlemen to New York, and saw Mr. Hanna at the Waldorf-Astoria. He said right off, in the most positive way, that the elections in Virginia were all fraudulent, that they would cheat him out of any vote that he got, and that he would not, therefore, send a dollar there or take any part in the contest there. I then asked him to give me a hearing, and he very courteously

did so. The important thing that I told him, the thing that impressed him most, was that we, the gold-standard men, had a real and important following and that we worked against and would have men at the polls to prevent cheating. Upon my representations on this head, he finally agreed to make a fight in Virginia, and a fine fight was made there by the Republican party. I don't know how much money was sent there, but I have heard it was as much as $160,000. Further, we got up a Palmer and Buckner organization and Mr. Hanna gave that great assistance. I thought, therefore, that we had a very fair chance to carry the State for the gold standard; but when the election came off it was found that all the money that had been spent had just as well have been thrown in the Potomac River. In the white counties, where the white people would not allow themselves to be cheated, McKinley beat Bryan in many of them and ran up with him in all the others. But in the negro counties (all the negroes voting the Republican ticket), Bryan got overwhelming majorities and thus carried the State by about 20,000 votes. If the vote had been counted as cast, McKinley would have carried the State by a large majority.

The greatest blunder that was ever made by a political party was the act of the Republican party directly after the war in conferring upon all the

negroes the right to vote. It takes but a small portion of degenerate white men in any Southern State, added to the whole mass of the negroes, to make a majority of the votes in the State. The white people of a Southern State simply cannot submit to a government founded on the negro vote. They will suffer extermination before they will submit to it, and any Northern community of white men would do the same. In giving the negro the vote the Republican party attempted to do something which is simply impossible and it has received absolutely no returns for the foolish act.

But this it has done. The white people of the South are naturally the most conservative and law-abiding people in the world. Let alone, they would never ally themselves with free silver or any other unsound fad. Not only so, but there is a very large element amongst them, descendants of the old Whigs, and protective tariff men, which has a strong penchant for the Republican party. If there had been no negro question in the South to force all the white men to stand together as one man, long before this there would have been a reputable Republican party in every Southern State that would have contested the control of each with fair, if not even, chances to win. Indeed, I believe that each Southern State would before this have been controlled by the Republican party. In giv-

ing the whole negro population the right to vote the Republican party therefore inflicted upon the white people of the South the most horrible curse that any people ever suffered from, and they killed their own goose of the golden egg.

I am happy to say that in Virigina we have, by constitutional provisions, so eliminated the bad elements of the suffrage, both white and black, that fraudulent elections are pretty well ended and we have a perfectly sound government in all respects. I am happy to believe, too, that my editorial articles in *The Times* aroused the moral elements in the State and brought them together to demand and secure the abandonment of frauds in elections.

With one more incident in my life I shall close these reminiscences.

In 1907 The Neale Publishing Company, of New York and Washington, published for me a small volume entitled "A History of Virginia Banks and Banking Prior to the Civil War, with an Essay Upon the Banking System Needed." The prevalent notion about the State Banks that the old long-settled States had prior to 1861 is very erroneous. Virginia had one of the best (if not the best) banking systems that ever existed, and I have given a full account of it in the volume referred to. But the most valuable part of it, if it has any value, is a discussion in the third chapter

of the elementary principles involved in money and banking.

My intercourse with men has taught me that a very great proportion of them think that commerce—trade—is carried on by exchanging money, coins or currency notes—for commodities. This is another error and one that is productive of the most injurious consequences. Commerce, in its large sense, is nothing but the exchange by one locality of its surplus commodities for the surplus commodities of another locality. The said exchange is effected by transferring upon the books of the banks the dollar values of each commodity in the form of credits. Thus, Jones, in the city of Richmond, Virginia, buys 10,000 pounds of cotton at 10 cents a pound—$1,000—from Thompson, of Wilmington, North Carolina. Jones sends Thompson his check on the First National Bank of Richmond for $1,000. Smith, of Wilmington, buys 10,000 pounds of bacon from Dixon of Richmond at 10 cents a pound—$1,000—and sends him his check on the First National Bank of Wilmington in payment. Thompson deposits Jones's check in the First National Bank of Wilmington and it sends the check to the First National Bank of Richmond for collection that is under an order for the latter bank to send $1,000 in money to the Wilmington bank. On the day that check gets to the Richmond bank, Dixon deposits Smith's check

in it which was an order for the Richmond bank to send it to the Wilmington bank, with directions that the Wilmington bank should send to Richmond $1,000 in money. But the Richmond bank, on looking into the case, asks, Why go through all this tom-foolery of sending $1,000 to Wilmington and bringing $1,000 from Wilmington here? We will settle the matter thus—we will take the credit on our books for $1,000 which Jones has, and transfer it to the credit of Dixon, and thus he will get paid for his bacon; and we will send Smith's check back to the Wilmington bank and tell it to transfer the $1,000 credit on its books that Smith has to the account of Thompson, and thus Thompson will be paid for his cotton.

This is done, the transaction is closed up to the satisfaction of every one, and not a dollar of money has been used in it. The thing at bottom was nothing but an exchange of some bacon that Richmond had no use for, for some cotton that Wilmington had no use for, effected by exchanging the dollar value of the commodities on the books of the banks by transferring credits on those books from one person to another. This is *commerce*. If ninety-nine transactions in every one hundred in commerce were run down to the bottom they would be found to be in substance the Richmond and Wilmington transaction.

Now the part that the dollar plays in these trans-

actions is the all-important one, and it is the point that the great body of the people are absolutely ignorant on, and from their ignorance on it has proceeded the awful financial disasters that the country has suffered from.

Bearing in mind the main proposition that commerce is exchanging one commodity for another, how are we to get a basis for those exchanges? How is a man to know the number of bushels of wheat that are to be given for a certain number of bushels of corn, or how many pounds of cotton are to be given for a certain number of pounds of bacon? To determine this there must be a third agency, and this third agency we call "the dollar."

The United States Government has enacted by law that 25 8-10 grains of gold, 9-10 fine, shall be "the dollar," and that it shall be the standard of value. It could have called it a "sequin" or anything else, but it chose to call it a "dollar." Accordingly, all men interested in wheat got together and determined that in the state of demand for and supply of wheat, one bushel of wheat was the equal in value of 25 8-10 grains of gold, 9-10 fine, in the then state of demand for and supply of gold. Mark this statement well, for it is at the bottom of the whole business and of all commerce. Then all the men interested in corn got together and determined that in the then state of the supply of and demand for corn two bushels of corn were

the equal in value of 25 8-10 grains of gold, 9-10 fine, in the then state of demand for and supply of gold. It was to say that a bushel of wheat was at that time worth a dollar, and that a bushel of corn was at that time worth fifty cents. That being established we had a basis for exchanging wheat for corn.

Now of course it is a mere figure of speech to say that all these men "got together." The idea I intend to convey is that the price established is the result of the codification of opinions by the law of supply and demand. The value of the dollar then is established by comparing the gold in it with a commodity under the law of supply and demand. It has been much contended in high quarters that the value of the dollar depends upon the labor required to produce it. But you may put any amount of labor upon the production of the gold in a dollar, but if there is no demand for the gold, it will have no value. The value of the dollar, as the value of anything else, depends upon the law of supply and demand.

This great fact is now to be noted. The importance of the dollar is not, as generally believed, as a purchasing agency, but as a standard of value for creating a basis on which commodities may be exchanged. When that basis is established business has little further use for the dollar. Business carries itself along after that by exchanging com-

modities by transferring their credit values upon the books of the banks.

It is absolutely necessary, for a stable currency, and for peace and order in business, that these and their cognate principles should be understood by the voters of the nation; and yet it is my opinion, judging from my own experience in my contact with men, that there is not one man in one thousand that understands them. In my recent book, "A History of Virginia Banks and Banking," I have undertaken to explain and illustrate these principles in a way that will enable the simplest and plainest citizen to understand them. If I could only feel that this explanation will be conveyed to the great mass of the voters so as to end all chance of a future William J. Bryan, I should feel that I had not lived in vain.